Supreme Court, U.S.
FILED

No. 03-1420 APR - 7 2004

IN THE OFFICE OF THE CLERK

Supreme Court of the United States

MICHAEL W. GRIFFIN and LAKE COUNTY, INDIANA,
a Political Subdivision of the State of Indiana,
Petitioners,

v.

INDIANA DEPARTMENT OF LOCAL GOVERNMENT FINANCE,
Respondent.

On Petition for a Writ of Certiorari to the Indiana Supreme Court

PETITION FOR A WRIT OF CERTIORARI

GERALD M. BISHOP
2115 West Lincoln Highway
Merrillville, IN 46410
(219) 738-2400

JOHN S. DULL *
8300 Mississippi Street, Suite F
Merrillville, IN 46410
(219) 769-2875

GEORGE C. PATRICK **
GEORGE C. PATRICK & ASSOCIATES, P.C.
706 Merrillville Road
Crown Point, IN 46307
(219) 662-7959

Counsel for Petitioners

* Counsel of Record

** Motion for Admission to United States Supreme Court Pending

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTIONS PRESENTED

In Indiana, the Hospital Care for the Indigent ("HCI") program provides cost-free emergency medical care to indigent patients who do not qualify for Medicaid. The program is financed by the State's imposition of an "HCI tax" derived from annual property tax levies imposed in each of Indiana's ninety-two counties which are separate from the counties general property tax levies. The HCI funding formula is established by statute and uses data which is twenty (20) years old and has never been subsequently correlated with actual claims experience or expenditures. The questions presented for review are:

A. Whether Indiana's HCI tax violates the Equal Protection Clause of the Fourteenth Amendment and the principles advanced in *Allegheny Pittsburgh Coal Co. v. County Comm'n,* 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed. 2d 688 (1989).

B. Whether Indiana's HCI tax violates the Due Process Clause of the Fourteenth Amendment.

PARTIES TO THE PROCEEDING

Petitioner Michael W. Griffin ("Griffin") is a real property owner, taxpayer, and resident of Highland, Lake County, Indiana.

Petitioner Lake County, Indiana, is a political subdivision of the State of Indiana, and is charged with administering tax levies and collections of County residents, including those of Petitioner Griffin.

Respondent Indiana Department of Local Government Finance ("DLGF" or "State"), is a governmental agency within the State of Indiana which, *inter alia*, administers taxes and programs on behalf of the State of Indiana.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT	2
A. Facts Regarding The HCI Tax & Program	2
B. Background And Previous Proceedings	5
REASONS FOR GRANTING THE PETITION	7
I. INDIANA'S HCI TAX VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT AND THE IMPOSITION OF THE TAX IS IN DIRECT CONTRAVENTION OF *ALLEGHENY PITTSBURGH COAL CO. V. COUNTY COMM'N*, 488 U.S. 336, 109 S.CT. 633, 102 L.ED. 2D 688 (1989)	8
II. THE HCI TAX SCHEME IS ARBITRARY AND VIOLATIVE OF FOURTEENTH AMENDMENT SUBSTANTIVE DUE PROCESS RIGHTS	10
CONCLUSION	13

TABLE OF AUTHORITIES

CASES Page

Allegheny Pittsburgh Coal Co. v. County Comm'n, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed. 2d 688 (1989) ..... *passim*

Burrell v. City of Kankakee, 815 F.2d 1127 (7th Cir.1987) 11

Coniston Corp. v. Village of Hoffman Estates, 844 F. 2d 461 (7th Cir.1988) 11

Davidson v. New Orleans, 96 U.S. 97, 24 L.Ed. 616 (1877) 10, 11

Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S. Ct. 114, 71 L.Ed. 303 (1926) 11

Great N. Ry. v. Weeks, 197 U.S. 135, 46 S.Ct. 426, 80 L.Ed. 532 (1936) 10

Hillsborough v. Cromwell, 326 U.S. 620, 66 S. Ct. 445, 90 L. Ed. 358 (1946) 8

Lake County Council, et al. v. State Board of Tax Commissioners, 706 N.E.2d 270 (Ind. Tax 1999) 2, 3

Lawrence v. Mississippi Tax Comm'n, 286 U.S. 376, 52 S. Ct. 556, 76 L.Ed. 1102 (1932) 10

Lutheran Hosp., Inc. v. State Department of Pub. Welfare, 571 N.E.2d 542 (Ind. 1991) 2

Nordlinger v. Hahn, 505 U.S. 1, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992) 10

Northside Sanitary Landfill, Inc., v. City of Indianapolis, 902 F.2d 521 (7th Cir.1990) 11

St. Mary's Med. Ctr. v. Warrick County, 671 N.E.2d 929 (Ind. Ct. App.1996), *trans denied* .. 2, 3

CONSTITUTION AND STATUTES

U.S. CONST.:

U.S. CONST. amend. XIV (1868) ..... *passim*

TABLE OF AUTHORITIES—Continued

	Page
U.S. Code:	
28 U.S.C. § 1257(a)	2
Indiana Code:	
IND. CODE § 6-1.1-18-2	6, 12
IND. CODE § 6-1.1-18.5-2	4
IND. CODE § 12-16-1 *et seq.*	*passim*
IND. CODE § 12-16-14-1 *et seq.*	*passim*
IND. CODE § 16-1.1-18.5-2	4
Indiana Public Laws:	
Indiana Public Law 16-1986, Section 72	3

IN THE

Supreme Court of the United States

No. ___

MICHAEL W. GRIFFIN and LAKE COUNTY, INDIANA,
a Political Subdivision of the State of Indiana,
Petitioners,

v.

INDIANA DEPARTMENT OF LOCAL GOVERNMENT FINANCE,
Respondent.

On Petition for a Writ of Certiorari to the Indiana Supreme Court

---

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The January 8, 2004, opinion of the Indiana Supreme Court which denied Petitioners' request for review of the September 9, 2003 adverse ruling of the Indiana Tax Court is unreported. *(Pet. App. 1a)*. The September 9, 2003 opinion of the Indiana Tax Court is reported at 794 N.E.2d 1171 (Ind. Tax 2003) *(Pet. App. 2a-11a)*. Related decisions are the March 5, 2003 opinion of the Indiana Supreme Court reported at 784 N.E.2d 448 (Ind. 2003) *(Pet. App. 12a-30a)*; the June 28, 2002 opinion of the Indiana Tax Court reported at 770 N.E.2d 957 (Ind. Tax 2002) *(Pet. App. 31a-36a)*; and the April 3, 2002 opinion of the Indiana Tax Court reported at 765 N.E.2d 716 (Ind. Tax 2002) *(Pet. App. 37a-50a)*.

JURISDICTION

On January 8, 2004, the Indiana Supreme Court denied review (i.e., transfer) of the September 9, 2003 opinion of Indiana Tax Court thereby giving Petitioners ninety (90) days, or through and including April 7, 2004, in which to file this Petition for Writ of Certiorari. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

Indiana's "Hospital Care for the Indigent, Property Tax Levy and Funds" Act, IND. CODE § 12-16-14-1 *et seq.* is at issue. Relevant provisions are set out in Petitioners' Appendix to the Petition *(Pet. App. 51a-57a.)*.

STATEMENT

A. Facts Regarding The HCI Tax & Program

Indiana's Hospital Care for the Indigent ("HCI") Program was enacted and given effect on July 1, 1986 as IND. CODE § 12-5-6-12, *et seq.*, and later recodified under IND. CODE § 12-16-1 *et seq. See Pet. App. at 51a-57a.* The HCI Program was designed to provide payment to Indiana health care providers who rendered emergency medical care to indigent patients who did not qualify for Medicaid. The Indiana Tax Court succinctly analyzed the structure and operation of the HCI program in *Lake County Council, et al. v. State Board of Tax Commissioners*, 706 N.E.2d 270 (Ind. Tax 1999) as follows:

> The HCI program was enacted to provide cost-free emergency medical care for the poor. *See Lutheran Hosp., Inc. v. State Department of Pub. Welfare*, 571 N.E.2d 542, 544 (Ind. 1991); *St. Mary's Med. Ctr. v. Warrick County*, 671 N.E.2d 929, 931 (Ind. Ct. App. 1996), *trans denied.* The program is funded through a

> tax levy on the property located in each county and distributions from the Financial Institutions Tax and the Motor Vehicle Excise Tax. *See IND. CODE § 12-16-14-1 (1998).* The tax levy is imposed by the fiscal body of each county and is treated like any other state and county ad valorem property tax. *See id § 12-16-14-2 (1998).* In imposing the tax levy, the county fiscal body has no discretion as to the rate of tax because it is determined by a statutory formula. *See id. § 12-16-14-3 (1998).* The State Board is charged with reviewing each county's property tax levy and enforcing the requirements of the HCI property tax levy. *See id § 12-16-14-4 (1998).* Once the property taxes are collected, they are deposited in the county HCI fund. *See id § 12-16-14-5 (1998).* The money in the county HCI fund is then deposited in the state HCI fund. *See id. § 12-16-14-6 (1998).* Payments to emergency medical care providers are made from the state HCI fund. *See id. § 12-16-7-3 (1998)....*
>
> Under the HCI program, the HCI property tax levy (i.e., property tax rate) is not uniform across the State; it varies from county to county. Additionally, a county's property tax levy is not correlated to how much of the state HCI fund is spent in a particular county.

Lake County Council, et al., 706 N.E.2d at 273; *see also Pet. App. 14a-16a.*

The initial HCI funding mechanism was established by Indiana Public Law 16-1986, Section 72. That formula established the "net amount" that a county paid for hospital care for indigent as the base amount. A separate base was established for each county in the state of Indiana. In determining the base, a formula was used which utilized an average of expenditures[1] over a three year period (1984, 1985

---

[1] Each County's net amount excluded any State reimbursements and certain excise taxes (bank, savings and loan associations, production credit, and motor vehicle) over the three year base period.

and 1986), and established an amount which fixed the HCI base for each respective county. That three year average fixed the HCI base for the specific county forever. Neither the funding formula nor any county's "base rate" have been revised since implementation of the HCI Program.

The funding formula further provides that the base rate established for each county at the inception of the program was increased annually by the state's average assessed value growth quotient. The combination of these two factors—the initial base rate and the annual growth rate quotients—results in the HCI dollar levy which a county must pay in any given year[2], and parenthetically establishes the amount of property tax that a county real property owner must pay.

Due to the automatic acceleration provisions contained in the funding formula, HCI tax levies have been increased annually between four and six percent without any relationship to any factor in the operation of the HCI program, or to contemporary county expenditures. The net effect is that the revenues collected by the HCI tax have continued to grow since 1987.

The HCI funding formula also uses seventy two (72) different tax rates for implementation of the HCI tax throughout Indiana's ninety-two Counties. Those varying tax rates deviate significantly in amount. For example, from 1992-1997, the HCI tax rates ranged from a low of $0.14 per $100 of assessed valuation, to a high of $ 0.5024 per $100 of assessed valuation, or a difference of almost 400% between the lowest rate of assessment and the highest rate of assessment. The county with the highest tax rate is Lake County, Indiana, the county of residence for Petitioner Griffin.

---

[2] Subject to the minimum and maximum growth rates in IND. CODE § 16-1.1-18.5-2.

During the 1993 Legislative Session, the Indiana General Assembly amended the HCI program[3] and decided to use HCI funds to leverage Federal Medicaid Dollars. In short, the Legislature provided that $35 Million per State fiscal year would henceforth be transferred out of the State HCI Fund into the Medicaid Indigent Care Trust Fund to be used to leverage Federal Medicaid dollars. Since 1994, $35 Million of the HCI fund dollars collected on an annual basis have been transferred to leverage Medicaid collections.

Although the original purpose of the HCI Program was to provide emergency care for indigent patients who did not qualify for Medicaid, leveraging of medicaid dollars has now become the prime use of the HCI Tax revenues. For the years involved in Griffin's appeal, approximately 96% of the HCI tax revenues collected were used for Medicaid Leveraging by the State of Indiana, and not for payment of HCI claims.

As a result of the discrepancies and deviations in the amounts paid by residents of different Indiana counties into the HCI fund, Petitioner Griffin and the other Lake County, Indiana taxpayers paid approximately forty-one percent of all of the total HCI taxes collected by the entire state of Indiana in 1999.[4]

B. Background And Previous Proceedings

On August 25, 2000, Petitioners Michael Griffin and Lake County filed their Petition for Judicial Review with the Indiana Tax Court. Griffin sought a reversal of the final determination of the State Board of Tax Commissioners which denied his refund claim for real property taxes paid

---

[3] Although the Legislature amended how the funds could be used, it kept the original funding formula intact.

[4] In 1998, the HCI Fund collected $42,148,253 state-wide, of which Lake County Residents paid $16,954,520, or in excess of 40% of the total state-wide revenues collected.

toward the HCI property tax levy for the 1996, 1997 and 1998 tax years. In his Petition, Griffin alleged that the HCI tax: (a) Violated Article 10 Section 1 of the Indiana Constitution; (b) Violated Article 1, Section 23 of the Indiana Constitution; (c) Violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; (d) Violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and/or (e) Violated the taxing limitations imposed by IND. CODE § 6-1.1-18-2.

On April 3, 2002, the Indiana Tax Court held that the HCI tax was a state tax and therefore violated Article 10 § 1 of the Indiana Constitution which mandated that state assessments and taxation be "uniform and equal". *(Pet. App. at 47a-50a)* As a result of that determination, the Tax Court did not address Griffin's other constitutional claims.

On March 5, 2003, the Indiana Supreme Court reversed the Tax Court's ruling. *(Pet. App. at 2a-30a)* In so doing, the Court concluded that the HCI tax was neither a "local" nor a "state" tax, but rather "a combined effort by local, state, and federal governments". *(Pet. App. at 19a-21a)* As a conesquence, the HCI tax did not violate Article 10 Section 1 of the Indiana Constitution.

Griffin thereafter returned to the Tax Court for resolution of the remaining constitutional issues. On September 9, 2003, the Tax Court ruled that:

> ". . . as a matter of law, the HCI tax does not violate Article 1, § 23 of the Indiana Constitution, nor does it violate the Equal Protection Clause or the Due Process Clause of the Fourteenth Amendment to the United States Constitution." *(Pet. App. at 11a).*

On October 8, 2003, Griffin timely filed a Petition for Review Of Tax Court Decision with the Indiana Supreme Court. On January 8, 2004, the Indiana Supreme Court denied acceptance of Griffin's Petition for Review without opinion

(Pet. App. 1a). It is from these determinations for which Petitioners seek a Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

Indiana's HCI tax and funding formula uses data which is over twenty (20) years old. The data has never been subsequently correlated with actual expenditures. Further, the data relates to only 4% of the current use of the tax revenues. As a consequence, Petitioner Griffin pays grossly disproportionate real property taxes in contravention of Federal Equal Protection guarantees as pronounced by this Court in *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed. 2d 688 (1989).

The refusal of the Indiana Courts to fully address Griffin's arguments on these issues have left him with no remedy other than to secure redress from this Court. Refusing to grant Certification would be tantamount to allowing the State of Indiana to impose a property tax in violation of Griffin's Federal Equal Protection rights by merely turning a deaf ear to facts and arguments it cannot overcome. As this case presents issues similar to the facts in *Allegheny*, the Court should consider this case as an opportunity to provide a more current interpretation of the *Allegheny*/taxation strand of Equal Protection jurisprudence.

Moreover, this case presents the Court with the opportunity to advance jurisprudence on the issue of how aberrant a State taxation formula can be before it violates Substantive Due Process rights. These issues will now be discussed separately.

I. INDIANA'S HCI TAX VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT AND THE IMPOSITION OF THE TAX IS IN DIRECT CONTRAVENTION OF *ALLEGHENY PITTSBURGH COAL CO.* V. *COUNTY COMM'N*, 488 U.S. 336, 109 S.CT. 633, 102 L.ED. 2D 688 (1989).

In *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed. 2d 688 (1989), this Court invalidated a State tax holding that a tax assessor's failure to reassess the value of property for over a ten (10) year period was unconstitutional since it resulted in the Plaintiff paying a disproportionate property tax. In other words, the mere passage of time vis-a-vis the taxation scheme created equal protection violations. While the Court stressed that transitional delays in the adjustments of assessed value would not violate the Equal Protection Clause, the discrepancy had continued for more than ten years with little change. *Id.* at 343, 109 S. Ct. at 638 Noting that although the county assessor's practice may have been contrary to the guidelines published by the Tax Commission, the Court cited a more general authority for the proposition that "the Equal Protection Clause protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class." *Id.* at 345-46, 109 S. Ct. at 639 (citing *Hillsborough v. Cromwell*, 326 U.S. 620, 623, 66 S. Ct. 445, 448, 90 L. Ed. 358, 363 (1946)). The Court also held that the fairness of a tax can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings. *Allegheny*, 488 U.S. at 346, 109 S. Ct. at 639.

In the case at bar, more egregious facts exist than those which were presented to this Court in *Allegheny*. Here, it is uncontroverted that the HCI tax uses as its permanent base data which is twenty (20) years old. That data has never been

subsequently correlated with actual claims experience. Over the years, actual claims related to the base data have declined. Notwithstanding that fact, the tax has increased annually irrespective of need or expenditures. Moreover, that base data is now totally unrelated to the current function of the tax.[5] As a result, Petitioner Griffin and other Lake County residents have paid disproportionately greater HCI taxes than others in the State since the implementation of the HCI Tax.[6] For example:

1. As early as 1988, Petitioner Griffin and other Lake County Taxpayers paid $1,156,840.73 more than was required to pay Lake County's HCI claims. Yet, no effort was made to reassess or revise the funding formula to guard against Petitioner Griffin continuing to pay a disproportionate HCI property tax. As a result, Lake County's HCI property tax increased annually. By 1997, Petitioner Griffin and other Lake County taxpayers' overpayment had quadrupled to $4,630,739.68.

2. While at the same time Petitioner Griffin and other Lake County Taxpayers were overpaying HCI claims, in 1988 Marion County, Indiana Taxpayers underpaid $2,029,294.99. Due to the failure to subsequently correlate the base data, by 1997 Marion County's underpayment increased to $5,851,249.71.

---

[5] The base data is derived from emergency medical care to indigent patients who did *not* qualify for Medicaid. There was no relationship of the base data to Medicaid expenditures. Yet 96% of the current revenues generated by the implementation of the tax is being used by the state for Medicaid leveraging.

[6] Petitioners and other Lake County taxpayers currently pay approximately 40% of total HCI tax revenues collected state-wide. Moreover, HCI taxes of other Indiana residents have not increased as much as Griffin's increase since the tax was implemented.

3. Due to automatic increases, in 1999 Petitioner Griffin and other Lake County Taxpayers paid over $17 Million in HCI Tax. Yet that year actual Lake County HCI claims paid (upon which the tax is based) were only $516,985.70.

In *Nordlinger v. Hahn*, 505 U.S. 1, 11, 112 S.Ct. 2326, 2332, 120 L.Ed.2d 1 (1992), this Court distinguished *Allegheny* while upholding California's property tax system (Proposition 13). *Id.* at 3-10, 105 S. Ct. at 2328-2331. That system set assessments at fair market value only after a transfer of property, despite the claim that this resulted in the same taxation disparities that were held invalid in *Allegheny*. *Id.* The Court distinguished *Allegheny* as a case where there was no plausible state justification for the tax disparity. *Id.* at 11-17, 105 S. Ct. at 2332-2336. Thus, *Allegheny* is now arguably limited to situations where the state has not articulated a clear plan or purpose for its tax scheme.

In the case at bar, even if there were a rational basis for the initial tax scheme set forth in 1985, the subsequent failure to revisit that scheme, especially after HCI tax revenues began to be used for the different purpose of Medicaid leveraging in 1993, demonstrates the irrationality of the current tax scheme. In sum, there is no plausible and reasonable explanation for the use of the current HCI scheme and classifications to fund Medicaid leveraging.

II. THE HCI TAX SCHEME IS ARBITRARY AND VIOLATIVE OF FOURTEENTH AMENDMENT SUBSTANTIVE DUE PROCESS RIGHTS.

For a tax to be found violative of the protections of substantive due process, the tax must be arbitrary, oppressive, or unjust. *Great N. Ry. v. Weeks*, 197 U.S. 135, 152, 46 S.Ct. 426, 434, 80 L.Ed. 532 (1936); *Lawrence v. Mississippi Tax Comm'n*, 286 U.S. 376, 383, 52 S.Ct. 556, 558, 76 L.Ed. 1102 (1932); *Davidson v. New Orleans*, 96 U.S. 97, 107, 24

L.Ed. 616, 620 (1877) (Bradley, J. concurring). Moreover, the tax must be found to be clearly "arbitrary and unreasonable, having no substantial relation to the public health, safety morals, or general welfare." *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L.Ed. 303 (1926). "Arbitrary and unreasonable" has been interpreted to mean invidious or irrational. *Coniston Corp. v. Village of Hoffman Estates*, 844 F. 2d 461, 467 (7th Cir.1988); *Burrell v. City of Kankakee*, 815 F.2d 1127, 1129 (7th Cir.1987); *see also Northside Sanitary Landfill, Inc., v. City of Indianapolis*, 902 F.2d 521, 522 (7th Cir.1990). That is the case with the HCI funding formula.

Indiana's HCI tax is arbitrary and unreasonable for numerous reasons, including the following:

1. There is no correlation between the percentage contribution of HCI tax paid by taxpayers in a given county, and the amount of HCI tax benefits that county receives in return.

2. The HCI tax has created an assessment or classification of taxpayers based upon where the taxpayers' are real property is located. This classification means that taxpayers with properties of identical value are paying widely disparate HCI taxes to the State of Indiana for its use in Medicaid leveraging. In other words, properties with similar value are not taxed in a uniform matter throughout the state, despite the fact that the HCI tax revenues are deposited into a common state fund.

3. Under the HCI taxing formula, the starting tax rate for a county is its average annual net HCI cost for the years 1984, 1985, and 1986. Presumably this presents a synopsis or picture of the anticipated future HCI expenditures by county. However, for those counties such as Lake County with a high beginning base and taxpayer Griffin, this establishes a disproportionate starting point.

4. For subsequent years, each Counties previous year's HCI tax levy is increased by the statewide average assessed value growth quotient computed under IND. CODE § 6-1.1-18.5-2 (subject to a 1% minimum or a 5% maximum). As such, those counties that have a high assessed value growth quotient are able to artificially shift that growth increase to those counties with a low assessed value growth quotient. This is because a statewide "average" is utilized.
5. The tax formula escalator is a measure of wealth, and not a measure of HCI usage by county. As such, a county with a high initial HCI base experiences a continued increase regardless of service delivery by providers within that county. In the case at bar, Petitioner Griffin has had his HCI tax assessments continue to rise in a geometrically accelerated fashion despite the fact that actual HCI expenditures have actually substantially decreased in Griffin's county of residence. In short, the use of the once computed three year average as the HCI base freezes all subsequent tax levies to certain levels irrespective of their relevance to current circumstances.
6. Griffin's HCI tax levy goes up automatically irrespective of program costs and purely because of unrelated factors to the operation of the HCI program. There is no rational tie between HCI dollars needed to provide indigent services, and increasing this amount by the assessed valuation of real estate under the HCI tax.
7. There is no rational relationship between the funding formula escalator (which is a measure of wealth increase through assessed value increase) and the base period (which is a measure of HCI expenditures in a county).

These idiosyncrasies of the HCI tax and funding formula demonstrate that it is, in reality, arbitrary and unreasonable.

As such, this novel case gives the Court a chance to clarify and supplement the substantive due process rights of taxpayers and Certiorari should be granted.

CONCLUSION

The Petition for a Writ of Certiorari should be granted, and the judgments of the Indiana Supreme Court and Indiana Tax Court should be reversed.

Respectfully submitted,

GERALD M. BISHOP
2115 West Lincoln Highway
Merrillville, IN 46410
(219) 738-2400

JOHN S. DULL *
8300 Mississippi Street, Suite F
Merrillville, IN 46410
(219) 769-2875

GEORGE C. PATRICK **
GEORGE C. PATRICK & ASSOCIATES, P.C.
706 Merrillville Road
Crown Point, IN 46307
(219) 662-7959

Counsel for Petitioners

* Counsel of Record

** Motion for Admission to United States Supreme Court Pending

APPENDICES

APPENDIX A

[SEAL]
DAVID C. LEWIS
Clerk

CLERK
SUPREME COURT, COURT OF APPEALS,
AND TAX COURT
State of Indiana
217 State House,
Indianapolis, In 46204
317-232-1930 Fax 317-232-8365

GERALD BISHOP
2115 West Lincoln Highway
Merrilville, IN 46410

Cause Number
49T10-0009-TA-00098
Lower Court Number:
N/A
Court Of Appeals No:
49S100209TA00489

GRIFFIN, MICHAEL & LAKE COUNTY-V-
IN STATE BOARD OF TAX

You are hereby notified that SUPREME COURT has on this day 1/08/04 PETITIONER'S PETITION TO REVIEW IS DENIED.

RANDALL T. SHEPARD, CHIEF JUSTICE

ALL JUSTICES CONCUR. MS

WITNESS my name and the seal of said court, this 8th day of January, 2004

/s/ David C. Lewis
Clerk, Supreme Court
Court of Appeals and Tax Court

APPENDIX B

INDIANA TAX COURT

Cause No. 49T10-0009-TA-98

MICHAEL GRIFFIN and LAKE COUNTY, a political subdivision of the STATE OF INDIANA,

Petitioners,

v.

DEPARTMENT OF LOCAL GOVERNMENT FINANCE,

Respondent.

September 9, 2003, Decided

ORDER ON PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

FISHER, *J.*

In August of 2000, the Petitioner, Michael Griffin, filed an original tax appeal in which he charged that Indiana's Hospital Care for the Indigent Tax (HCI tax) violated Article 10, § 1 of the Indiana Constitution, Article 1, § 23 of the Indiana Constitution, and the *Fourteenth Amendment to the United States Constitution*. This Court subsequently issued an opinion on Griffin's appeal, holding that the HCI tax violated Article 10, § 1 of the Indiana Constitution because it resulted in the non-uniform and unequal taxation of substantially similar property throughout the state. *Griffin v. Dep't of Local Gov't Fin.*, 765 N.E.2d 716 (Ind. Tax Ct. 2002) (Griffin I). As a result, the Court did not address Griffin's other constitutional challenges. *See id. at* 718 n. 2.

On March 5, 2003, the Indiana Supreme Court reversed this Court's holding in *Griffin I. Dep't of Local Gov't Fin. v. Griffin*, 784 N.E.2d 448 (Ind. 2003) (Griffin II). Consequently, the case now returns to this Court to resolve the remaining constitutional issues initially raised by Griffin:

> I. Does the HCI tax violate Article 1, § 23 of the Indiana Constitution?
>
> II. Does the HCI tax violate the *Equal Protection Clause of the Fourteenth Amendment to the United States Constitution*?
>
> III. Does the HCI tax violate the *Due Process Clause of the Fourteenth Amendment to the United States Constitution*?

ANALYSIS AND OPINION

Standard of Review

Both Griffin and the Department of Local Government Finance (Department) have filed motions for summary judgment on the remaining constitutional issues. Summary judgment is proper only when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *See* Ind. Trial Rule 56(C). *See also W.H. Paige & Co. v. State Bd. of Tax Comm'rs*, 732 N.E.2d 269, 270 (Ind. Tax Ct. 2000). Cross motions for summary judgment do not alter this standard. *W.H. Paige,* 732 N.E.2d at 270.

Discussion

Background

In *Griffin II*, our Supreme Court described the HCI program:

Before 1986, each of Indiana's counties bore all responsibility for indigent health care. The legislature enacted the HCI provisions in 1986 and then recodified them in 1992 at

Ind[iana]Code §§ 12-16-2-1 to 12-16-16-3. The general purpose was to provide cost-free emergency medical care to indigent patients who did not qualify for Medicaid. The HCI program transferred the administration of indigent health care to the State and imposed an HCI tax levy to finance it.

Under the present arrangement, the Department [] reviews each county's property tax levy . . . and . . . enforce[s its] requirements[.] Each county annually imposes the levy as a property tax for that county and collects it like other state and county *ad valorem* property taxes. Unlike the general property tax levy, the Indiana Code prescribes the amount of the HCI levy for each county; it is the previous year's levy increased by the percentage of growth in assessed value of all property in the state. Certain statutory limits on property tax rates may be exceeded [to] meet the requirements of the county hospital care for the indigent fund.

An HCI fund [is established] in each county. The balance of each county's HCI fund is transferred to the state HCI fund. The State administers the HCI program and reimburses providers of emergency medical care to the indigent for their expenses from the state HCI fund. In 1993, the legislature modified the HCI program to secure additional federal Medicaid funds by using $35 million of the state HCI fund as matching money.

The initial HCI levy for each county had been set at the average of its indigent hospital care expenditures over 1984-86, with certain adjustments. The HCI tax rate thus varies from county to county because of the difference in the counties' historical expenditures on hospital services for the indigent during the years immediately before the HCI program was enacted.

Griffin II, 784 N.E.2d at 451-52 (internal citation, quotation, and footnotes omitted).

It was against this backdrop that Griffin asserted the HCI tax violated Article 10, § 1 of the Indiana Constitution. More specifically, he argued that because the HCI tax rates varied from county to county, as opposed to one tax rate applied uniformly and equally across the state,[1] the HCI tax violated Indiana's constitutional guarantee that all property within the state be assessed and taxed at a uniform and equal rate. *See* IND. CONST. art. 10, § 1(a).

The Supreme Court, however, rejected Griffin's argument; it determined that Article 10, § 1 of the Indiana Constitution requires that the same HCI tax rate shall apply alike to all *in any given taxing district*, whatever that taxing district may be (i.e., the state, a county, a township, or a municipality). *Griffin II*, 784 N.E.2d at 452-53 (emphasis added). The Supreme Court also explained that despite the fact that the HCI tax is a "combined effort[] of [the] state, local, and federal government[] to advance the welfare of [Indiana's] indigent[,]" *id.* at 455, there was no "constitutional evil in . . . setting the rate of local contribution so that it varies in harmony with expenses for indigent health care in the local area." *Id.* at 456. Consequently, the Supreme Court implicitly acknowledged the legislature's classification of taxpayers on a county-by-county basis. *See id.* (stating that "the General Assembly [complied with the requirements of Article 10, § 1 when it] decided that, for purposes of financing indigent health care, the counties were not similarly situated and varied the tax burden accordingly[]"). Furthermore, because all taxpayers within each county are subject to the same HCI

---

[1] At the crux of Griffin's complaint is the fact that the HCI tax rate in Lake County, Indiana is the highest in the state. Accordingly, Griffin complains that as an owner of property in Lake County, he pays HCI tax at a higher rate than property owners in other counties.

tax rate, the Supreme Court held there was no Article 10, § 1 violation. *See id.* at 459.

Griffin's Remaining Constitutional Claims

The Court now turns to Griffin's remaining constitutional claims. The Court notes, however, that its standard of review for alleged violations of the Indiana Constitution is well established: the statutes providing for the HCI tax are presumed constitutional until Griffin, as the party challenging their constitutionality, clearly overcomes the presumption by a contrary showing. *See State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1037 (Ind. 1998) (St. John V).

I. Article 1, § 23 of the Indiana Constitution:

The Privileges and Immunities Clause

Article 1, § 23 of the Indiana Constitution provides: "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens." IND. CONST. art. 1, § 23. According to Griffin, the HCI tax is unconstitutional under Section 23 because it arbitrarily "establishes a class of taxpayers (property owners in the County with the lowest . . . HCI tax) and provides them with a privilege not equally shared by members of the same class (taxpayers in those counties who . . . pay a higher HCI tax)." (Pet'r Mem. In Support of [Its] Mot. for Partial Summ. J. at 20.)

Claims asserted under Article 1, § 23 are subject to the two-part test enunciated in *Collins v. Day,* 644 N.E.2d 72 (Ind. 1994). First, the disparate treatment must be "reasonably related to inherent characteristics which distinguish the unequally treated classes." *Id.* at 78-79. Second, the preferential treatment must be uniformly applicable and equally available to all persons similarly situated. *Id.* at 80.

In applying this test, the Court must first determine whether HCI tax is reasonably related to the inherent

characteristics that define, or distinguish, the classes. In this case, each class (i.e., county) is not defined by its HCI tax rate. Rather, each class is defined by its historical expenditures on indigent health care. As the Indiana Supreme Court discussed within the context of Griffin's Article 10, § 1 claim, the HCI funding formula reflects the legislative determination that the local areas should contribute to the HCI fund in proportion to the HCI benefits they in turn receive. *See Griffin II*, 784 N.E.2d at 456. Lake County's HCI tax rate is the highest in the state for no other reason than it has "historically received much more HCI service than [] other counties." *Id.* at 458 n. 14. Thus, the distinction between counties is neither arbitrary nor unreasonable, but rationally related to the legislative goal of "matching burden with benefit." *Id.* at 457.

Turning to the second prong of the *Collins* test, this Court must ensure that the preferential treatment provided by HCI tax is uniformly applicable to all similarly situated persons. *See Collins*, 644 N.E.2d at 80. Griffin argues that the HCI tax is unconstitutional as applied: "although [] similarly situated to []other taxpayers in, for example, Marion County, [Lake County taxpayers are] subjected to a substantially different tax burden—despite the fact that the funds collected [by all counties] are used for the same purpose[.]" Griffin's argument must again fail, for it ignores the fact that he, as a member of the Lake County class, is in a class separate from the other 91 classes of taxpayers throughout the state.

Furthermore, within his respective class, Griffin is treated no differently than any other taxpayer in Lake County—they all pay the HCI tax at the same rate. Likewise, a taxpayer in Allen County pays the HCI tax at the same rate as all other taxpayers in Allen County; a taxpayer in Marion County pays the HCI tax at the same rate as all other taxpayers in Marion County; a taxpayer in Wells County pays the HCI tax at the same rate as all other taxpayers in Wells County. Within each

respective county classification, each taxpayer is treated consistently. Consequently, it cannot be said that the HCI tax, *as applied,* violates Article 1, § 23 of the Indiana Constitution.

II. The Equal Protection Clause:

Griffin's *Fourteenth Amendment* Challenge

Griffin also claims that the HCI tax violates the *Equal Protection Clause of the United States Constitution*, which provides "no state shall . . . deny to any person within its jurisdiction the *equal* protection of the laws." *U.S. CONST. amend. XIV, § 1* (emphasis added). The United States Supreme Court has explained that is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985). Griffin's "claim for equality" fares no better under *Fourteenth Amendment* analysis than it did under Article 1, § 23.

Under federal equal protection analysis, absent a showing that the challenged classification involves a suspect class or trammels on fundamental rights, the HCI tax is presumed valid and will be upheld so long as the classification is rationally related to a legitimate state interest. *See id.* at 440. Consequently, the *Equal Protection Clause* "does not forbid classifications. It simply keeps governmental decision makers from treating differently persons, who in all relevant respects are alike." *Nordlinger v. Hahn*, 505 U.S. 1, 10, 120 L. Ed. 2d 1, 112 S. Ct. 2326 (1992).

As the foregoing discussion shows, Griffin and his fellow Lake County taxpayers are not similarly situated to other taxpayers outside Lake County. The separate classification and treatment of taxpayers within each county for purposes of the HCI tax is rationally related to the legitimate policy that each county pay the HCI tax in proportion to its expenses for

indigent medical care. Thus, in the absence of evidence that Griffin has been treated differently from other taxpayers *within* Lake County, this Court cannot find a violation of his federal equal protection guarantees.

III. The Due Process Clause:

Griffin's Second *Fourteenth Amendment* Challenge

In addition to providing "equal protection under law," the *Fourteenth Amendment* also guarantees that no state shall "deprive any person of life, liberty, or property, without due process of law." *U.S. CONST. amend. XIV, § 1.* Due process contains both procedural and substantive elements. "Procedural due process requires that taxpayers be provided with notice and a meaningful opportunity to be heard before a tax liability is finally fixed." *Town of St. John v. State Bd. of Tax Comm'rs*, 690 N.E.2d 370, 388 (Ind. Tax Ct. 1997) (St. John III). "Substantive due process requires that taxation not be arbitrary, oppressive, or unjust." *Id.*

Griffin alleges that the HCI tax violates substantive due process. Thus, in order to claim that the HCI tax interferes with his substantive due process rights, Griffin must be able to demonstrate either that 1) it infringes "fundamental rights [or] liberties which are, objectively, 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed,'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21, 138 L. Ed. 2d 772, 117 S. Ct. 2258, 117 S. Ct. 2302 (1997) (citations omitted); or 2) the HCI tax is "arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394, 71 L. Ed. 303, 47 S. Ct. 114, 4 Ohio Law Abs. 816 (1926). Griffin seeks to have his claim resolved on the "arbitrary and unreasonable" showing.

Generally, Griffin claims the HCI tax is arbitrary because the HCI tax funding formula is "fundamentally flawed"—in reality, it does not match a county's burden with its benefit because "there is no apparent or reasonable correlation between the percentage contribution of HCI tax paid by a county, and the amount of HCI tax benefits that same county received in return." (Pet'r Supp. Mem. In Support Of [Its] Mot. for Partial Summ. J. at 5.) Specifically, he claims the HCI funding formula is arbitrary for eight reasons: 1) the HCI tax changes annually without any reference to actual HCI claims or expenditures; 2) the HCI funding formula uses claims experience data from 1984-1986 as a basis for the assessment of HCI taxes ad infinitum; HCI taxes will continue to increase ad infinitum irrespective of need; 4) the HCI tax uses a formula which is dependent upon real estate as a component; 5) HCI tax proceeds are currently being used for a purpose contrary to the purpose of the funding formula; 6) the use of HCI funds for Medicaid matching funds imposes a disproportionate share of taxes upon [the counties] to pay the State's obligation; 7) the fixed base being used in the HCI formula (which was predicated upon emergency expenditures in a given county) has no rational relationship to how the State should raise $35 million dollars for Medicaid matching purposes; and 8) the annual growth quotient is based upon a "state-wide" average. (Pet'r Mem. In Support of [Its] Mot. for Partial Summ. J. at 36-40.)[2]

---

[2] In subsequent briefing filed with the Court, Griffin states that he is not challenging the fact that the HCI funding formula is based upon extrapolated HCI data from 1984-86, but rather "whether . . . the method of extrapolation of that data is constitutional; whether the results of that extrapolation are constitutional; whether or not it is constitutional [] to use historical HCI data to subsequently fund non-HCI Medicaid; and whether or not the continued use of that extrapolated data now results in the imposition of a tax which is unconstitutional[.]" (Pet'r Reply to [Resp't] Supp. Mem. at 11-12.)

"Arbitrary and unreasonable" has been interpreted to mean invidious or irrational. *Coniston Corp. v. Village of Hoffman Estates*, 844 F.2d 461, 467 (7th Cir. 1988). This Court has stated that governmental action will be deemed irrational only if no sound reason may be hypothesized for the action whatsoever. *St. John III*, 690 N.E.2d at 391 (internal quotation and citation omitted). In other words, the government need not prove a sound reason to the Court's satisfaction in order to pass the rational basis test-it merely needs to hypothesize a sound reason. *Id.*

As the Supreme Court pointed out, despite Griffin's complaints about paying a higher HCI rate than others and about HCI funds being used to leverage Medicaid dollars, the net effect of the current HCI funding formula "has been to generate more money to aid the poor without provoking [] higher property tax[.]" *Griffin II, 784 N.E.2d at 457.* This reason, alone, is sufficient on its face to pass the "arbitrary and unreasonable" test of *Euclid.* Thus, in attempting to distribute the HCI burden amongst the counties in proportion to their historical expenditures for indigent health care, all the while generating up to another $45 million in federal matching funds to use for providing care to Indiana's poor, the Department acted in a rational manner. Consequently, Griffin's substantive due process claim fails.

CONCLUSION

For the aforementioned reasons, this Court finds that the material facts in this case are undisputed and that, as a matter of law, the HCI tax does not violate Article 1, § 23 of Indiana Constitution, nor does it violate the *Equal Protection Clause* or the *Due Process Clause of the Fourteenth Amendment to the United States Constitution*. Therefore, this Court DENIES Griffin's motion for partial summary judgment and GRANTS the Department's cross motion for summary judgment.

SO ORDERED this 9th day of September, 2003.

APPENDIX C

SUPREME COURT OF INDIANA

No. 49S10-0209-TA-489

GOVERNMENT FINANCE,
Appellant (Respondent Below),

v.

MICHAEL GRIFFIN and LAKE COUNTY,
Appellees (Petitioners Below).

March 5, 2003, Decided

OPINION

SHEPARD, *Chief Justice.*

Michael Griffin requested a tax refund of the real property taxes he paid toward Hospital Care for the Indigent for the 1996-1998 tax years. It was denied. Griffin appealed to the Indiana Tax Court, claiming among other things that the tax violates Article 10, § 1 of the Indiana Constitution. The Tax Court agreed. It is apparent that the system devised by the legislature protects local taxpayers from open-ended liability for indigent care and also apportions local costs with local benefits. We conclude that the tax is constitutional, and thus reverse.

Facts and Procedural History

Griffin is clerk-treasurer for the Town of Highland and an owner of property in Lake County. On January 12, 2000, Griffin filed two 17T Forms with the Lake County Auditor requesting a refund for the taxes he paid toward Hospital Care for the Indigent ("HCI") for 1996, 1997, and 1998. During

these three years, Lake County's tax rate for HCI ranged from $0.4824 to $0.5024 per $100 of assessed value. *Griffin v. Dept. of Local Gov't Fin.*, 765 N.E.2d 716, 718 (Ind. Tax Ct. 2002). The formula for the HCI tax rate is based on an extrapolation of historical HCI costs in each particular county,[1] thus producing disparate rates from county to county. See *State Bd. of Tax Comm'rs v. Montgomery*, 730 N.E.2d 680, 681 (Ind. 2000); *Griffin* 765 N.E.2d at 720.

In his refund claim, Griffin asserted that disparity between counties rendered the HCI tax illegal and unconstitutional. Therefore, he requested a review of his taxes by the Department of Local Government Finance pursuant to Ind. Code. § 6-1.1-26-2.

The Department held a hearing in which Griffin claimed that the HCI tax violated Ind. Const. art. 10, § 1. The Department did not pass on the constitutionality of the tax, saying this was outside of its authority; it denied Griffin's refund claim. Griffin appealed the Department's determination to the Indiana Tax Court, asking the court to declare the HCI tax unconstitutional, illegal, and in excess of statutory authority. Griffin also sought an injunction preventing collection of the tax. Lake County joined in the petition as an interested party.

Following cross-motions for summary judgment, the Tax Court ruled (1) that the HCI tax is a state tax, not a local tax, (2) that the HCI rate formula is not limited by other code provisions limiting property tax rates generally, and (3) that because the HCI tax rates vary from county to county, that variance results in property not being taxed in a uniform or equal manner as required under Article 10, § 1. *Griffin*, 765 N.E.2d at 722-24. Consequently, the Tax Court granted Grif-

---

[1] See *Ind. Code* § 12-16-14-3 (1998) for an explanation of the formula each county must apply in order to impose the HCI property tax levy.

fin partial summary judgment and reversed the Department's final determination. *Id.* at 724.

Having decided to apply its holding prospectively only, the Tax Court denied Griffin's request for a refund. *Griffin v. Dep't of Local Gov't Fin.*, 770 N.E.2d 957, 960 (Ind. Tax Ct. 2002). It also enjoined assessment or collection of the HCI tax but stayed its injunction until January 1, 2003, to allow the State reasonable time to revise the HCI tax rate or consider other solutions. Id. Accordingly, a taxpayer was not entitled to a refund of the HCI taxes due and payable before January 1, 2003.

Both sides petitioned for review. The Department challenges the ruling that the HCI tax is unconstitutional. (Department Br. at 10-11.) Griffin and Lake County request a review of the limited remedy the Tax Court afforded. (Pet'r Br. at 2.) Griffin also challenged the HCI tax as violating Ind. Const. art. 1, § 23, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The Tax Court did not address these other claims, presumably because it viewed the Article 10 claim as dispositive.

Having granted review, we deem the issues to be: (1) whether *Ind. Code* § 12-16-14-1 *et seq.*, which establishes the HCI tax, violates Article 10, § 1; (2) whether the Tax Court erred in refusing to order a refund; and (3) whether the Tax Court erred in staying its injunction against collection of the HCI tax. Our decision on the first of these resolves the other two. We begin with a brief review of Hospital Care for the Indigent.

I. What is the HCI Program?

We recently had occasion to analyze the structure and operation of the HCI program in *State Bd. of Tax Comm'rs v. Montgomery*, 730 N.E.2d 680, 681 (Ind. 200[illegible] Before 1986, each of Indiana's counties bore all responsibility for indigent health care. Id. The legislature enacted the HCI provisions in

1986 and then recodified them in 1992 at *Ind. Code* §§ 12-16-2-1 to 12-16-16-3. *Id.* The general purpose was to provide cost-free emergency medical care to indigent patients who did not qualify for Medicaid. *Id.* The HCI program transferred the administration of indigent health care to the State and imposed an "HCI tax levy" to finance it. *Id.*

Under the present arrangement, the Department must "review each county's property tax levy under this chapter and . . . enforce the requirements of this chapter with respect to that levy." *Id.* (citing *Ind. Code* § 12-16-14-4 (1998)). Each county annually imposes the levy as a property tax for that county and collects it like other state and county *ad valorem* property taxes. *Ind. Code* § 12-16-14-2 (1998). Unlike the general property tax levy,[2] the Indiana Code prescribes the amount of the HCI levy for each county; it is the previous year's levy increased by the percentage of growth in assessed value of all property in the state. *Montgomery*, 730 N.E.2d at 681.[3] Certain statutory limits on property tax rates may be exceeded "to meet the requirements of the county hospital

---

[2] "Levy" is a term used to describe the aggregate dollar amount of property taxes imposed to fund a given operation of local government. The levies imposed under the general property tax are subject to review by the Department. See *Ind. Code* §§ 6-1.1-17-1 to 20 (1998).

[3] This description, although not precisely correct, is adequate for purposes of this opinion and hopefully more easily understood than the statutory formulation:

> Each county shall impose an [HCI] property tax levy equal to the product of:
>
> (1) the [HCI] property tax levy imposed for taxes first due and payable in the preceding year; multiplied by
>
> (2) the statewide average assessed value growth quotient, using all the county assessed value growth quotients determined under *Ind. Code* 6-1.1-18.5-2 for the year in which the tax levy under this section will be first due and payable.

Ind. Code § 12-16-14-3 (1998).

care for the indigent fund." *Id.* (citing *Ind. Code* § 6-1.1-18-3(b)(7) (1998)).

The act establishes an HCI fund in each county. *Montgomery*, 730 N.E.2d at 681. The balance of each county's HCI fund is transferred to the state HCI fund. Id. The State administers the HCI program and reimburses providers of emergency medical care to the indigent for their expenses from the state HCI fund. *Griffin*, 765 N.E.2d at 720-21 (citing *Ind. Code* § 12-16-14-8 (1998)). In 1993, the legislature modified the HCI program to secure additional federal Medicaid funds by using $35 million of the state HCI fund as matching money. *Id.* at 721.

The initial HCI levy for each county had been set at the average of its indigent hospital care expenditures over 1984-86, with certain adjustments. *Montgomery*, 730 N.E.2d at 681. The HCI tax rate thus varies from county to county because of the difference in the counties' historical expenditures on hospital services for the indigent during the years immediately before the HCI program was enacted.

II. Taxation is Specially Legislative and Deference is Substantial

Every statute stands clothed with the presumption of constitutionality until clearly overcome by a contrary showing. *Boehm v. Town of St. John*, 675 N.E.2d 318, 321 (Ind. 1996). The party challenging the constitutionality of the statute bears the burden of proof, and all doubts are resolved against that party. *Id.* at 321. If there are two reasonable interpretations of a statute, one of which is constitutional and the other not, we will choose that path which permits upholding the statute. *Id.*

Taxation is a power purely within the province of the legislature. *Board v. Holliday*, 150 Ind. 216, 49 N.E. 14 (1898); *Board of Comm'rs v. Adler*, 77 Ind. App. 296, 133 N.E. 602 (1922). As the Department notes, the legislature has

wide discretion in taxing for the general welfare. See *Yarger v. Raver*, 237 Ind. 88, 143 N.E.2d 662 (1957); *Morgan County v. Seaton*, 122 Ind. 521, 24 N.E. 213 (1890). The power of the legislature regarding matters of taxation is unlimited, except as restricted by the Constitution. *Brown v. Baltimore*, 186 Ind. 81, 115 N.E. 86 (1917).

One constitutional restriction on this legislative power is Article 10, § 1, which provides, "The General Assembly shall provide, by law, for a *uniform* and *equal* rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal." (Emphasis added.) These provisions seek to distribute the burden of taxation upon the principles of uniformity, equality, and justice. *Davis v. Sexton*, 210 Ind. 138, 200 N.E. 233 (1936).

Uniformity in rate, as required by the Constitution, means that the same rate shall apply alike to all in any given taxing district. *Henderson v. London & Lancashire Ins. Co.*, 135 Ind. 23, 34 N.E. 565, 568 (1893). This means that as a general proposition, Article 10 requires that a tax for a state purpose must be uniform and equal throughout the state, a tax for a county purpose must be uniform and equal throughout the county, and so forth. *Board of Comm'rs of Jackson County v. State*, 155 Ind. 604, 58 N.E. 1037, 1039 (1900); *Bright v. McCullough*, 27 Ind. 223, 230 (1866).

What shall constitute a taxing district, and whether it may be confined to, or disregard, boundary lines of counties, townships, or municipalities, is a matter wholly within the discretion of the General Assembly. *Brown*, 115 N.E. at 86. The subjects and methods of taxation are legislative matters, and cannot be disturbed so long as the method prescribed is applicable alike to all within the prescribed class. *Davis*, 200 N.E. at 241. What is important is that there be uniformity and equality of rate as to those of the same class. *Id.*

Article 10 has been largely aimed at assessments. The history surrounding the drafting and ratification of the Constitution suggests that while Article 10 applies to assessments and taxation, *assessment* was the central concern of its proponents. Delegate Daniel Read of Monroe County, in proposing Section 1, stated:

> It appears to me, that no provisions are more proper for a Constitution, than those requiring *equality of assessment* for purposes of taxation. The duty of the Legislature to devise a system which will secure such equality and which will cause all the property of the State to be brought under taxation, should be held forth in the Constitution.

Comments of Delegate Read (Dec. 3, 1850), Debates in Indiana Convention, 1850, Vol. 1, p. 941 (emphasis added). Including the requirements of uniformity and equality in assessments and taxation elevated and preserved their importance as fundamental principles. Id.; see also, *Boehm*, 675 N.E.2d at 323.

We reiterated the thrust of Article 10 in *Kerr v. Perry School Twp.*, 162 Ind. 310, 70 N.E. 246, 247 (1904): "This provision of our fundamental law clearly applies to assessments and taxation, and does not profess to control the expenditure of money arising out of any assessment or taxation of property. It deals with the uniformity and equal rate of assessment and taxation of property within the taxing district or locality in which the particular tax is levied." Thus, when the rate of property assessment is uniform throughout a taxing district, the constitutional mandate of uniform and equal taxation has been fulfilled. *South Bend Public Transportation Corp. v. City of South Bend*, 428 N.E.2d 217, 223-24 (Ind. 1981).

Delegate Read stated: "There is hardly a subject connected with our State government, which has attracted more general

attention among the people, than the existing inequality in the assessment and taxation of property." *Id.* In proposing the inclusion of Article 10, § 1 in our Constitution, Delegate Read sought to rectify the "manifest injustice" that results in "permitting property, in the hands of the wealthy, which ought to be taxed as other property, to escape taxation altogether, or to be taxed only on a very small part of its value." *Id.* at 946. Such comments illustrate that the mischief being addressed was chiefly unequal assessment of properties, not the rates between counties or governmental units once the assessment was done. See e.g., *Boehm*, 675 N.E.2d at 322-23 (quoting comments of Delegate Borden (Dec. 4, 1850), Debates in Indiana Convention, 1850, Vol. 1, p. 946, 950).

In the end, of course, the Convention chose language covering both assessment and taxation. Legislative history suggests intent to apply a more muscular restraint on assessment.

III. The HCI Tax is Neither "Local" Nor "State"

As the parties to this case have done, much of the caselaw about Article 10 has analyzed the dispute at hand by inquiring whether the tax at issue is "state" or "local." Once this question has been answered, the disposition has flowed from the notion that state taxes must be uniform throughout the state and that local taxes must be uniform within the jurisdiction in which they are levied.

Of course, Article 10 does not even use the words "state" or "local." Instead, it commands that assessment and taxation be "*uniform and equal.*"

Article 10 challenges have typically involved taxes levied and spent by a locality or by the state government. The HCI tax is levied to fulfill a responsibility shared by the state and the county. Indeed, this joint effort produces additional funds

from the federal government to be used also for the general welfare of the people.

The nature of a tax is determined by its operation and incidence rather than by legislative title or designation. See *Wright v. Steers*, 242 Ind. 582, 179 N.E.2d 721 (1962). On this basis, the HCI tax cannot be simply classified as a "local" or "state" tax because the facts surrounding the tax and its operation demonstrate that it is part of a combined effort by local, state, and federal governments.

As the Department observes, financing health care for indigent persons has historically been recognized as a local responsibility. (Department Br. at 15.) During the early decades under our present Constitution, this Court noted, "Every county shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof." *Seaton*, 24 N.E. at 213.[4]

It is each county's responsibility to establish an HCI fund consisting of a property tax levy in each county. *Ind. Code* § 12-16-14-1. While the state manages the fund, the county fiscal body imposes the tax annually on all the taxable property of the county and collects it as other state and county *ad valorem* property taxes are collected. *Ind. Code* § 12-16-14-2.

Finally, the HCI tax now plays a role in Medicaid, itself a joint activity of the federal and state governments. Essentially, the federal government reimburses the states for Medicaid expenditures on the basis of a formula tied to the per-capita income in each state. *Ashley County Medical Center v. Thompson*, 205 F. Supp. 2d 1026, 1030 (E.D. Ark. 2002).

---

[4] The legislature has enacted many statutes in addition to the HCI statute that finance medical and other welfare costs for indigents at county expense. See e.g., *Ind. Code* § 12-17-3-1 *et seq.* (1998) (services for care of dependent and delinquent children and CHINS through county welfare fund); *Ind. Code* § 12-26-10-4 (1998) (county general fund to bear costs of care for indigent individuals pending admission to a state institution).

The federal share of Medicaid expenditures, known as "Federal Financial Participation," or "FFP," varies from fifty to eighty-three percent of a state's total Medicaid expenditures. Id. The Medicaid statute requires only that each State plan "provide for financial participation by the State equal to not less than 40 per centum of the non-Federal share." *Id.*, citing 42 U.S.C. § 1396a(a)(2).

As the Thompson court observed, local units of government are also allowed to fund Medicaid. "The portion of a State's Medicaid expenditures not covered by federal matching funds is properly referred to as the 'non-Federal share,' and sixty percent of the non-Federal share of a state's Medicaid expenditures may be funded by sources other than the State." *Id.*, 205 F. Supp. 1026.

The combined efforts of state, local, and federal governments to advance the welfare of the indigent suggest to us that the HCI tax is not solely for state or county purposes, but to satisfy a joint responsibility. It seems inadequate to test the constitutionality of the HCI program simply by asking whether the property tax portion is "state" or "local."

IV. Local Share Is Based On Experience

The Tax Court noted that Indiana's ninety-two counties have seventy-two different tax rates. See *Griffin*, 765 N.E.2d at 720. The reason for this, of course, is because the HCI property tax levy is based on an extrapolation of historical HCI costs in each particular county. The intended purpose of basing the HCI property tax classification system on such historical costs was to impose burdens in just proportions to the benefits received by each county's residents. (Amicus Curiae Br. at 2.)

Before HCI, a county was responsible for the "necessary costs" of care, but there was no limitation on the amount of "necessary costs" a county might have to bear. *Ind. Code*

§ 12-5-6-6 (1998). Taxpayers who lived in a county with a higher percentage of indigent residents risked responsibility for very significant expenses for medical care.

Because of this open-ended burden, the legislature made certain changes to the program in 1986 so as to reduce the counties' burdens. (Amicus Curiae Br. at 5-6.) For the first time, the amount of a county's financial obligation was capped.[5] *Id.* at 6.

The amount of a county's financial responsibility for indigent medical care was calculated via a formula that took into account *that county's* actual HCI expenditures from 1984-1986.[6] *Id.* By definition, the limit of a county's financial obligation under the HCI program was not influenced by the HCI payment experience of any other county. Id. This formula remains in place today.[7]

Local Taxes Always Vary. The theory of every republican government is that taxes should be levied equally, but this is impossible, even in the simplest states of society. *State ex rel. Lewis v. Smith*, 158 Ind. 543, 547, 63 N.E. 25, 27 (1902). The difficulty becomes more and more pronounced as civilization becomes more complex, because the circumstances and pursuits of the people become more diversified. *Id.* "'A just and perfect system of taxation,' said Chancellor Kent, 'is yet a desideratum in civil government.'" *Id.* (citing 2 Kent, Comm. 332). "'Perfectly equal taxation,' it has again been said, 'will remain an unattainable goal as long as laws and government and men are imperfect.'" *Id.*

---

[5] See *Ind. Code* §§ 12-5-6-6(a)-(c) (1986).

[6] See *Ind. Code* §§ 12-5-6-16(c), (e) (1986), as added by P.L. 16-1986 § 72, *eff.* July 1, 1986.

[7] See *Ind. Code* § 12-16-14-3, as revised by P.L. 283-2001, § 27, *eff.* July 1, 2002. The amount of the HCI tax levy for each county is annually increased by a percentage of growth in assessed value of all property in the state. *Montgomery*, 730 N.E.2d at 681.

We recognized in *Bright*, 27 Ind. at 229-30, that the wants of towns and cities cannot be equal. Some require a higher, and some a lower, rate of taxation. *Id.*; see also, *Robinson v. Schenck*, 102 Ind. 307, 1 N.E. 698 (1885). Article 10 simply intended that the uniformity and equality of rate should be co-extensive with the territory to which the tax applies. *Bright*, 27 Ind. at 229-30. In like fashion, the wants of counties cannot be equal either, thus requiring varying rates of taxation among counties.

Even Delegate Read acknowledged the aspirational nature of requiring *uniformity and equality* by implying that he did not expect the full achievement of absolute and precise exactitude: "I do not suppose, sir, that these inequities can be corrected by the Constitution, nor even wholly by the laws. But I would lay down the rule in the Constitution." Comments of Delegate Read (Dec. 3, 1850), Debates in Indiana Convention, 1850, Vol. 1, p. 946.

Article 10 "does not require that the rate of assessment shall be uniform and equal for all purposes throughout the State; and we think its meaning clearly is that the rate of assessment and taxation must be uniform and equal throughout the locality in which the tax is to be levied." *Bright*, 27 Ind. at 230. Based on this precept, we are hard pressed to see the constitutional evil in a program involving money from three levels of government that sets the rate of local contribution so that it varies in harmony with expenses for indigent health care in the local area. Pursuant to its broad discretion, the General Assembly properly decided that, for purposes of financing indigent health care, the counties were *not* similarly situated and varied the tax burden accordingly.

We addressed the issue of varying taxes among towns and counties in *Kent v. Town of Kentland*, 62 Ind. 291, 292 (1878). In that case, we upheld statutes that authorized cities to collect a school tax of persons who lived outside the city limits, if their children were sent to school within the city. We

held that this system did not conflict with Article 10, because throughout the state it operated alike on all persons in the same circumstances. *Id.* at 292. Justice Horace Biddle wrote:

> We can see nothing unconstitutional in any of these acts. They are "uniform and equal" in the rate of assessment and taxation, operate throughout the State, and upon all persons in the same circumstances, alike. Of course, the facts upon which these laws act are not equal and uniform, but continually vary; and a municipal law can no more act without facts, than the law of gravitation can act without matter. The laws, by which counties and townships levy and collect taxes for their own use, are uniform and equal, yet the rates of assessment and taxation in one county or township, as compared with another county or township, are not uniform and equal, and may vary from year to year. Those changes in fact do not affect the uniformity and equality of the law.

Id.

Similarly, in *Wright v. House*, 188 Ind. 247, 121 N.E. 433 (1919), we found no constitutional violation in a statute requiring the State and counties to share the expense of highway improvements in those counties. There, we stated:

> The fund to be provided in any county under the provision of the act to pay its part of the costs of the improvement of highways is raised by a general tax on the property of the county levied and collected as other taxes are levied and collected. The fact that the tax rate in counties where extensive improvements are made under the law may be greater than the tax rate in other counties where no improvements are made, or in counties where the improvements thereunder are less extensive, does not signify that the rates of taxation are not uniform within the meaning of the Constitution. Each county is a separate unit for the purpose of tax-

> ation, and it cannot be maintained that, within the county making the improvement, the tax levy is unequal.

Id. at 437.

By contrast to the present scheme of approximate balance between local tax burden and local benefit, Griffin proposes a single state-wide rate the revenue from which would be deployed wherever services were rendered. This would provide a mathematical equality of burden, of course. In light of the historic rule of local finance for local service in this field, we are not persuaded that the Constitution prohibits the legislature from matching burden with benefit.

V. Principal Effect Has Been to Reduce Local Tax Burden

While Griffin complains about paying a higher HCI rate than some others do and about HCI funds being used to leverage federal Medicaid dollars, the net result has been to generate more money to aid the poor without provoking the higher property taxes the former system produced.

The legislature's 1993 decision to use some HCI revenue for this purpose is illustrative. Some $35 million per state fiscal year of the state HCI fund is now transferred to the Medicaid indigent care trust fund to be used to leverage federal Medicaid dollars.[8] P.L. 277-1993 Section 82; (*see also*, R. 694). Allowing these funds to go through the Medicaid program generates more money for medical care provided by Indiana hospitals by leveraging approximately two additional federal dollars for every one local dollar contributed. (Department Br. at 8.) Undoubtedly, a portion of the additional Medicaid funds make their way to Lake County hospitals. The General Assembly decided that if this Medi-

---

[8] Federal law permits States to use state or local taxes or intergovernmental transfers as the state match for federal financial participation under Medicaid. 42 U.S.C. § 1396b(w)(6)(A). Federal law does not permit a selective tax on providers. *Id.*

caid revenue program generated more than $45 million in federal matching funds in a fiscal year, then the excess fund, up to $18 million, would be returned to the State HCI fund annually. P.L. 277-1993; (Department Br. at 8).

In 1995, the legislature revised the HCI program again eliminating the physical transfer of monies used to procure federal Medicaid matching funds back to the state HCI fund for payment of HCI hospital claims. Instead, it used the $35 million appropriated from the state HCI fund,[9] to make lump-sum payments variously referred to as "Medicaid payments to hospitals in lieu of HCI payments" or "HCI Add-On."[10]

Amounts remaining in the state HCI fund were to be used to reimburse non-hospital indigent care providers, *e.g.*, physicians. (Department Br. at 9.)[11] Under the 1995 amendments, the hospitals received lump sum payments in addition to their base in-patient payment rate. This was based on HCI payments during fiscal year 1992 divided by the hospital's total Medicaid patient days during that period. See *Ind. Code* § 12-15-15-8 (as amended 1995) (repealed 1998). Money in the HCI fund at the end of the state fiscal year may not revert to the state general fund. *Ind. Code* § 12-16-14-9. The 1995 changes caused the HCI fund balance to grow to approximately $ 17 million.

Most subsequent legislative efforts have further ameliorated Griffin's complaint about his county's disproportionate share of HCI tax. The General Assembly reduced Lake County's share of the property tax levy by $ 4,000,000. *Ind.*

---

[9] *See* P.L. 340-1995, § 8.

[10] See *Ind. Code* § 12-15-15-8 (as amended 1995) (repealed 1998); *see also*, S.R. at 3, submitted with the Department's Motion for Summary Judgment.

[11] *See* S.R. at 6, submitted with the Department's Motion for Summary Judgment.

Code § 12-16-14-3.4. It also reduced St. Joseph County's share by $ 1,000,000. *Ind. Code* § 12-16-14-3.7.[12]

The legislature added *Ind. Code* § 12-15-15-9 specifically aimed to address concerns about disparity in payments between some counties' HCI contributions and the reimbursements of providers within those counties. P.L. 126-1998 Section 5. This section, which is retroactive to the 1997-98 fiscal year, required the Family and Social Services Administration ("FSSA") to prepare a formula that "minimizes the difference between the aggregate amount paid under this section to all hospitals in a county for a state fiscal year and the amount of the county's HCI property tax levy for that state fiscal year." *Id.* Between the effects of federal leveraging and the impact of this formula, an even greater amount of money was returned to Lake County providers than to providers in other counties. Specifically, in April 1999, by operation of the HCI county equity payment methodology developed by FSSA, the State forwarded Lake County hospital providers HCI county equity payments totaling $6,757,188 for the State's 1998 fiscal year. (R. at 749.)

In its November 1992 report, the Indiana Commission on State Health Policy characterized the HCI program as "underdefined and misaligned." It noted:

> Indiana spent approximately $ 33 million in total county funds for providing emergency services under the Hospital Care for Indigent (HCI) Program . . . The program is inadequate in addressing the health care needs of the uninsured in Indiana . . . If Indiana were to use this money under the Medicaid program, the state

---

[12] In the 2001 legislative session, the General Assembly modified the HCI program and its funding formula. (Department Br. at 10.) This new legislation repeals the HCI program by 2003 and institutes an uninsured parents program. *Id.*

> would have approximately $ 66 million more to serve the health care needs of Indiana's uninsured . . .

Indiana Commission on State Health Policy, Hoosier Health Reform at 21-24 (Nov. 1992) (quoted in R.M. Haycox, A year of Change for our Health Care System, 1992 Survey of Recent Developments in Indiana Law, 26 Ind. L. Rev. 1003, 1012 (1993)). This is exactly what the legislature chose to do.

In the end, the question that is posed by the foregoing facts is: Aren't Griffin and his fellow property tax payers better off with the Medicaid leveraging than without it?[13] The question answers itself, but we will pause to lay out the answer anyway.

Lake County residents historically received much more HCI service than residents in other counties.[14]

Moreover, the HCI program cannot be examined in isolation because disproportionate share hospital ("DSH") pay-

---

[13] Enjoining the collection of the HCI tax would result in an immediate loss of $50 million in HCI revenue and cause the further loss of $126 million in federal Medicaid funds. *Id.*

[14] The following table demonstrates Lake County's proportionate share of the total HCI claims* paid for service dates 1992-1998:

Service Dates	Lake Co. HCI Claims Paid	Total HCI Claims Paid	Lake Co. % of Total HCI Claims
1992	8,775,191	27,331,727	32%
1993	2,670,427	6,993,488	38%
1994	4,528,888	15,051,332	30%
1995	481,569	976,647	49%
1996	532,631	964,815	55%
1997	653,327	1,103,046	59%
1998	516,986	820,151	63%

(See *Amicus Curiae* Br. at 20, n. 14); R. at 133-51. (*Note that effective July 1, 1993, "HCI claims" include only claims paid to physicians and ambulance providers under *Ind. Code* § 12-16-7.)

ments, a related part of Medicaid, are also relevant here. Through DSH, Lake County providers have received significantly more reimbursements than those in many other counties. (R. at 695-96.) When DSH is taken into account, the total benefits received outweigh the tax levy. For example, in state fiscal year 1995, Lake County hospitals and providers received $27,755,978 in DSH and HCI reimbursements compared with an HCI tax levy of $14,320,445. (R. at 699, 708.) For state fiscal year 1996, Lake county hospitals and providers received $26,928,506 in DSH and HCI reimbursements compared with an HCI tax levy of $ 15,242,100. *Id.*

Furthermore, during the fiscal year 1998, the total amount collected by the HCI program statewide was $144,313,918. (R. at 148.) The total amount of HCI and Medicaid reimbursements paid statewide during that fiscal year was $52,231,742. *Id.* During that period, Lake County taxpayers paid $16,931,455 in HCI tax. Of the reimbursements made during that year, however, $17,682,517 was allocated to Lake County. *Id.* Thus, Lake County ended with a positive balance for state fiscal year 1998 of $751,062.

In comparing the proportions of Lake County's HCI contributions and reimbursements with the statewide contributions and reimbursements, a differential of 4% exists. Nevertheless, as demonstrated above, Lake County has received more than what it has contributed. The HCI tax formula has thus been effective in allocating the tax burden according to the costs it has incurred. Put another way, the tax is proportionate to the expenses.

Conclusion

As Justice John H. Gillett once observed, despite occasional imposition of disproportionate taxation, "the courts must admit that there exists in the general assembly a large measure of discretion in the enactment of a scheme of taxation." *Smith*, 63 N.E. at 27. In its broad discretionary

authority, our legislature developed a "scheme of taxation" that takes into account the historical differences that exist among counties with respect to HCI costs and sends more funds for increased health care in local areas than property taxpayers pay. Given the high level of deference owed the legislature on matters of taxation, we are unable to say that the HCI system violates Article 10.

SULLIVAN, BOEHM, and RUCKER, *JJ.*, concur.

DICKSON, *J.*, dissents without separate opinion.

APPENDIX D

INDIANA TAX COURT

Cause No. 49T10-0009-TA-98

MICHAEL GRIFFIN and LAKE COUNTY, COMPANY,
Successor in Merger with Petitioners,

v.

DEPARTMENT OF LOCAL GOVERNMENT FINANCE,
Respondent.

June 28, 2002, Decided

ORDER AND JUDGMENT ENTRY

FISHER, *J.*

The Petitioner, Michael Griffin, in this case requests that the Court grant him a $180.29 refund of the Hospital Care for the Indigent (HCI) tax[1] and enjoin the State from collecting the HCI tax. The Respondent, the Department of Local Government Finance (DLGF), asks the Court to deny Griffin's motion and instead stay the effect of its April 3, 2002 decision in *Griffin v. Department of Local Government Finance,* 765 N.E.2d 716 (Indiana Tax Ct. 2002), which held that the HCI tax violated Article 10, Section 1 of the Indiana Constitution. *Griffin v. Dep't of Local Gov't Fin.*, 765 N.E.2d 716, 724 (Indiana Tax Ct. 2002).

When the Court rendered its decision in *Griffin*, by separate order it set the matter for further proceedings to determine the nature and extent of Griffin's refund. *Id.* On May 6, 2002, Griffin filed a motion to enjoin collection of the HCI

[1] *IND. CODE* § 12-16-14-1.

tax. On June 17, 2002, the DLGF requested that Griffin's motion be denied and that the Court stay its April 3, 2002, order granting Griffin's motion for partial summary judgment on the issue of whether the HCI tax violated Article 10, Section 1 of the Indiana Constitution. On June 24, 2002, the Court held a hearing on the matter.

The parties have urged the Court to weigh the immediate harm of an unconstitutional HCI tax levy against the potential harm to the State's 750,000 Medicaid recipients if the Court enjoins collection of the HCI tax. Griffin notes that HCI revenue represents only 1.25% of the State's $4 billion Medicaid budget. Because HCI revenue represents only a small portion of the State's Medicaid budget, Griffin argues that any large-scale effect of an HCI refund on Medicaid does not outweigh the harm to taxpayers who have been assessed for an unconstitutional tax. Accordingly, he asks that collection of the HCI tax be enjoined and that he be refunded with interest the HCI tax he paid for fiscal years 1996-98, totaling $180.29. The DLGF argues, on the other hand, that if federal Medicaid matching funds are taken into account,[2] a loss of $50 million in HCI revenue ultimately would represent a loss of $126 million from the State's Medicaid budget, making it more difficult to pay for health care for Indiana's neediest citizens. As a result, the DLGF asks this Court to stay the effect of its April 3, 2002, decision, allow the DLGF time to appeal the Court's ruling to our Supreme Court, and allow the legislature time to fix the HCI tax.

It is appropriate for the Court in this case to balance Griffin's immediate interest in enjoining the State from further collecting HCI tax against the State's immediate interest in collecting HCI revenues. *See Smith v. Smith*, 159 Ind. 388, 65 N.E. 183, 185 (Ind. 1902) (holding that a court should

---

[2] The federal government matches approximately every $38 in state funds with $62 in federal funds.

balance the fiscal needs of the State and the claims of a citizen who seeks to enjoin collection of an illegal tax). In striking this balance, the Court may grant Griffin's request for an injunction "only at that stage of the proceedings when his substantial right may be protected . . . with the minimum amount of prejudice to the public[.]" *Id.*; *see also Town of St. John v. State Bd. of Tax Comm'rs*, 691 N.E.2d 1387, 1389-90 (Ind. Tax Ct. 1998) (St. John IV), *rev'd on other grounds*. Furthermore, the remedy of an injunction "against an illegal and void tax is the proper one[.]" *Yocum v. First Nat. Bank of Brazil*, 144 Ind. 272, 43 N.E. 231, 232 (Ind. 1896). An injunction is also appropriate where it prevents a multiplicity of suits related to the same subject matter. *Gray v. Foster*, 46 Ind. App. 149, 92 N.E. 7, 9 (Ind. Ct. App. 1910).

In testimony, Griffin offered his opinion as to various approaches that might offset the financial effect of enjoining collection of the HCI tax, which would include either a refund or a credit to taxpayers. Griffin argues that because the $2 million of HCI revenue that is actually spent statewide on emergency medical care for indigent patients is a relatively small amount, emergency medical care for indigents will not be jeopardized if this Court opens the door to statewide HCI tax refunds or credits. Griffin conceded, however, that there likely would be an effect on the State's Medicaid budget were immediate relief granted to him. In particular, Family and Social Service Administration (FSSA), which runs the State's Medicaid program, could lose tens of millions of dollars of federal matching funds as a result of any HCI refund. Nevertheless, Griffin suggests that FSSA could (1) trim its budget, (2) suspend its operations until the legislature fixes the HCI tax, (3) cut optional programs, or (4) rely on intergovernmental transfers to solve any budget shortfalls. Finally, Griffin submitted evidence showing that Lake County has received more than 160,000 requests for HCI tax

refunds and that were those refunds granted, Lake County would run out of money before the end of the year.[3]

The DLGF presented evidence showing that the State has already factored projected HCI revenue into its $4 billion Medicaid budget for Fiscal Year 2003, which begins July 1, 2002. Overall, the State stands to lose $126 million in Medicaid funds if collection of the HCI tax is enjoined. In particular, FSSA, which relies on HCI revenue to secure federal matching Medicaid dollars, serves more than 750,000 Indiana residents and currently faces a budget shortfall of $250 million. It must somehow balance its budget before the end of Fiscal Year 2003. According to FSSA officials, to immediately enjoin collection of the HCI tax would add to its budget woes by eliminating $57 million it would otherwise receive in federal matching funds leveraged by HCI revenue, thus necessitating cuts in programs that serve the most disadvantaged citizens of the State. Moreover, the FSSA officials testified that intergovernmental transfers need legislative approval and so denied that such transfers could provide an immediate solution to FSSA's budget concerns. Based on the foregoing, the DLGF rejects any suggestion that FSSA suspend its operations and rather urges the Court to craft a remedy that is equitable to the State's Medicaid recipients.

The question, then, is whether the Court's decision in *Griffin* should be given prospective effect only. It is appropriate for this Court to deny retroactive effect to cases of first

---

[3] The Court is unmoved by Lake County's possible budget crisis. As soon as Lake County learned that this Court had declared the HCI tax unconstitutional, it spent at least $130,000 in taxpayers' dollars by mailing Lake County residents more than 250,000 forms 17T for a tax refund and letters encouraging residents to file for a refund of the HCI tax. It then advertised the refund in two prominent newspapers. Lake County's own actions have placed it on the path of a government shutdown. The Court has little sympathy.

impression where retrospective relief could produce substantial inequities. *See Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-7, 30 L. Ed. 2d 296, 92 S. Ct. 349 (1971). *Griffin* clearly is a case of first impression. Moreover, the Court is mindful of the 160,000 claims for refund currently pending in Lake County (notwithstanding the actions of the Lake County government). The Court is also mindful of the possibility that taxpayers from other Indiana counties will, as Griffin has, seek HCI tax refunds for the past three fiscal years, which could amount to $150,000,000. Whether this sum ultimately would be paid out of county treasuries or the State treasury, it would, in either event, substantially strain an already suffering public fisc. In the end, the taxpayers of Indiana would in all likelihood be taking funds from one treasury to place it in the other treasury.

Accordingly, the Court holds that the effect of its decision in *Griffin* shall be stayed until January 1, 2003 and ORDERS that an injunction against the assessment and collection of the HCI tax shall be GRANTED on that date.[4] The State should be afforded a reasonable period of time to fix the HCI tax rate or consider other suitable solutions, and the Court believes that delaying the injunction against enforcing the HCI tax until January 1, 2003 will accommodate these concerns. *See St. John IV*, 691 N.E.2d at 1389-90 (delaying the effect of the Court's holding that a portion of the real property tax system was unconstitutional); *cf. Salorio v. Glaser*, 93 N.J. 447, 461 A.2d 1100, 1110 (N.J. 1983), *cert. denied*, 464 U.S. 993, 78 L. Ed. 2d 682, 104 S. Ct. 486 (1983) (delaying by 6 months the effect of a decision declaring a $30,000,000 per year transportation tax unconstitutional).

---

[4] The Court notes that as a result of its holding here, no taxpayer, including Griffin, is entitled to a refund of HCI taxes due and payable before January 1, 2003.

The Court now DENIES Griffin's request for a refund. The Court ORDERS that the HCI tax shall continue to be collected through the November 2002 installment of property taxes, which taxes have in most instances been billed and in some instances paid by those who pay for the entire year with the May installment. The HCI remittances are to be made by the counties to the State, as has been done in the past, with the June 30, 2002 remittance and the December 31, 2002 remittance. The HCI tax is not to be assessed, collected, or remitted on or after January 1, 2003 (unless it is a delinquent payment).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered accordingly.

SO ORDERED this 28th day of June, 2002.

Thomas G. Fisher, *Judge*
Indiana Tax Court

APPENDIX E

INDIANA TAX COURT

Cause No. 49T10-0009-TA-98

MICHAEL GRIFFIN and LAKE COUNTY, a political subdivision of the STATE OF INDIANA,

Petitioners,

v.

DEPARTMENT OF LOCAL GOVERNMENT FINANCE,[1]

Respondent.

April 3, 2002, Decided

ON APPEAL FROM A FINAL DETERMINATION OF THE STATE BOARD OF TAX COMMISSIONERS

---

[1] The State Board of Tax Commissioners (State Board was originally the Respondent in this appeal. However, as of December 31, 2001, the legislature abolished the State Board. P.L. 198-2001, § 119(b)(2). Effective January 1, 2002, the legislature created the Department of Local Government Finance (DLGF), IND. CODE § 6-1.1-30-1.1 (West Supp. 2001)(eff. 1-1-02); P.L. 198-2001, § 66, and the Indiana Board of Tax Review (Indiana Board). IND. CODE § 6-1.5-1-3 (West Supp. 2001)(eff. 1-1-02); P.L. 198-2001, § 95. Pursuant to Indiana Code § 6-1.5-5-8, the DLGF is substituted for the State Board in appeals from final determinations of the State Board that were issued before January 1, 2002 IND. CODE § 6-1.5-5-8 (West Supp. 2001)(eff. 1-1-02); P.L. 198-2001, § 95. Moreover, the law in effect prior to January 1, 2002 applies to these appeals. IND. CODE § 6-1.5-5-8 (West Supp. 2001)(eff. 1-1-02); P.L. 198-2001, §§ 95, 117. Although the DLGF has been substituted as the Respondent, this Court will still reference the State Board throughout this opinion.

FISHER, *J.*

Michael Griffin appeals the final determination of the State Board of Tax Commissioners (State Board) denying his refund claim for real property taxes paid toward the Hospital Care for the Indigent (HCI) property tax levy for the 1996, 1997, and 1998 tax years. Griffin raises several issues in his motion for partial summary judgment; however, the Court finds that the relevant issues are:

> I. Whether the HCI property tax levy is a state tax;
>
> II. Whether the HCI tax, as a state tax, exceeds the one cent ($0.01) of $ 100 assessed value tax rate allowed under *Indiana Code* § 6-1.1-18-2; and
>
> III. Whether the HCI tax rate violates Article 10, Section 1 of the Indiana Constitution because it results in nonuniform and unequal taxation of substantially similar property.[2]

For the reasons stated below, the Court GRANTS Griffin's motion for partial summary judgment and DENIES the State Board's cross motion for summary judgment.[3]

---

[2] Griffin also argued that the HCI property tax levy violates Article 1, § 23 of the Indiana Constitution and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. (Pet'r Partial Summ. J. Br. at 2.) Because this Court finds that the HCI property tax levy violates Article 10, § 1 of the Indiana Constitution, the Court need not address these other issues. *See infra*.

[3] The State Board responded to Griffin's summary judgment motion and moved for summary judgment in its favor on the same issues raised in Griffin's motion.

FACTS AND PROCEDURAL HISTORY

Griffin is a Lake County resident and real property owner.[4] From 1996 to 1998, the Lake County HCI property tax levy ranged from $0.4824 to $ 0.5024 cents per $ 100 of assessed value.[5] On January 12, 2000, Griffin filed two Forms 17T with the Lake County auditor seeking a refund for the 1996, 1997, and 1998 tax years. Griffin claimed that he was entitled to a refund of the HCI tax because it was illegal. Specifically, Griffin argued that the HCI property tax levy was a state tax, that it violated Article 10, Section 1 of the Indiana Constitution,[6] and that it surpassed the maximum state tax rate allowed by *Indiana Code* § 6-1.1-18-2.[7]

Pursuant to *Indiana Code* § 6-1.1-26-2, the auditor forwarded Griffin's refund claims to the State Board for review.

---

[4] Griffin also serves as Clerk-Treasurer of the town of Highland in Lake County. However, he moves for partial summary judgment on his own behalf to challenge the HCI taxes assessed against his real property.

[5] *See Indiana Code* § 12-16-14-3 and n. 10 *infra* for an explanation of the formula each county must apply in order to impose the HCI property tax levy.

[6] Article 10, § 1 of the Indiana Constitution—the Property Taxation Clause-provides:

> The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal.

IND. CONST. art. 10, § 1(a). This constitutional provision is also codified at *Indiana Code* § 6-1.1-2-2 ("All tangible property which is subject to assessment shall be assessed on a just valuation basis and in a uniform and equal manner.").

[7] Under *Indiana Code* § 6-1.1-18-2, the State may not impose a tax on tangible property in excess of one cent ($0.01) per each $ 100 of assessed valuation. *IND. CODE* § 6-1.1-18-2.

The State Board held a hearing, and on July 31, 2000, it issued its final determination, denying Griffin's claim for refund. The State Board concluded that it had no authority to determine the constitutionality of the HCI statute. The State Board also concluded that the HCI tax was not a state tax. The State Board concluded that even if it was a state tax, it did not violate the statutory state tax limits. The State Board reasoned that because the statute establishing the formula for the HCI tax was enacted subsequent to and was more specific than the state tax rate statute (*Indiana Code* § 6-1.1-18-2), the HCI statute repealed any inconsistent provisions in the state tax limit statute.

Griffin filed this original tax appeal on August 25, 2000.[8] Griffin then filed a motion for partial summary judgment. The State Board filed its response opposing the summary judgment motion and made a cross motion for summary judgment in its favor. The Court heard oral arguments. Additional facts will be supplied as needed.

ANALYSIS AND OPINION

Standard of Review

The Court gives great deference to the State Board's final determinations when the State Board acts within the scope of its authority. *Wetzel Enters., Inc. v. State Bd. of Tax*

---

[8] In addition to this original tax appeal seeking a refund of the HCI tax (refund appeal), Griffin also filed an original tax appeal from his remonstration of the Lake County budget (budget appeal). After Griffin remonstrated against the imposition of the HCI tax in the 2000/2001 budget hearings, Griffin, among other petitioners, filed an original tax appeal and a motion for preliminary injunction to enjoin the State from collecting the HCI tax in excess of the maximum state tax rate contained in *Indiana Code* § 6-1.1-18-2. This budget appeal, filed February 23, 2000, and docketed as 49T10-0002-TA-27, was consolidated into this refund appeal. Griffin's motion for partial summary judgment, however, pertains only to his refund appeal. (Pet'r Partial Summ. J. Br. at 3 n.4.)

Comm'rs, 694 N.E.2d 1259, 1261 (Ind. Tax Ct. 1998). Accordingly, this Court reverses final determinations of the State Board only when those decisions are unsupported by substantial evidence, are arbitrary or capricious, constitute an abuse of discretion, or exceed statutory authority. *Id.* The taxpayer bears the burden of demonstrating the invalidity of the State Board's final determination. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998). Summary judgment is proper only when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *See* Ind. Trial Rule 56(C). *See also W.H. Paige & Co. v. State Bd. of Tax Comm'rs*, 732 N.E.2d 269, 270 (Ind. Tax Ct. 2000). Cross motions for summary judgment do not alter this standard. *W.H. Paige*, 732 N.E.2d at 270.

Discussion

Griffin argues that the HCI property tax levy is illegal because it is a state tax, and as such, it violates Article 10, Section 1 of the Indiana Constitution and exceeds the once cent ($0.01) per $100 assessed value tax rate allowed under *Indiana Code* § 6-1.1-18-2. Because a review of the HCI program will assist with a decision of the ultimate issue in this case, the Court will first review the HCI program and property tax levy. The issues of whether the HCI tax is a state tax, whether *Indiana Code* § 6-1.1-18-2 applies, and whether it violates Article 10, Section 1 of the Indiana Constitution will be then be addressed in turn.

HCI Program

The HCI program, first enacted in 1986 and later recodified in 1992, was enacted to provide cost-free emergency medical care to indigent patients who did not qualify for Medicaid. *State Bd. of Tax Comm'rs v. Montgomery*, 730 N.E.2d 680, 681 (Ind. 2000). The HCI program is currently funded by a tax levy on property located in each county and by

distributions from the financial institutions tax, motor vehicle excise taxes, and commercial vehicle excise taxes.[9] *IND. CODE* § 12-16-14-1 (West Supp. 2001) ;[10] *see also Lake County Council v. State Bd. of Tax Comm'rs*, 706 N.E.2d 270, 273 (Ind. Tax Ct. 1999), *rev'd on other grounds by* 730 N.E.2d 680 (Ind. 2000) (citing IND. CODE § 12-16-14-1 (1998)).

The fiscal body of each county annually imposes the property tax component of the HCI program and collects it like other state and county ad valorem property taxes. *IND. CODE* § 12-16-14-2. Although the county imposes this tax levy, it has no discretion to fix the rate of tax because the legislature, through a statutory formula, has mandated the rate. *IND. CODE* § 12-16-14-3. That formula requires each county to impose an HCI property tax levy equal to the product of:

> (1) the [HCI] property tax levy imposed for taxes first due and payable in the preceding year; multiplied by
>
> (2) the statewide average assessed value growth quotient, using all the county assessed value growth quotients determined under IC 6-1.1-18.5-2 for the year in which the tax levy under this section will be first due and payable.

---

[9] While the financial institutions tax, motor vehicle excise tax, and commercial vehicle excise tax are listed taxes, *see Indiana Code* § 6-8.1-1-1, the HCI property tax is not a listed tax. *Montgomery v. State Bd. of Tax Comm'rs*, 708 N.E.2d 936, 940 n.5 (Ind. Tax Ct. 1999) *rev'd on other grounds by* 730 N.E.2d 680 (Ind. 2000). In this case, Griffin is only challenging the property tax component of the HCI program.

[10] Effective January 1, 2000, the commercial vehicle excise taxes were added as an additional funding source for the HCI tax. *See IND. CODE* § 12-16-14-1(2) (West Supp. 2001).

IND. CODE § 12-16-14-3.[11] The HCI property tax rate, however, is not uniform across the state but varies from county to county. *Lake County Council,* 706 N.E.2d at 273. Indiana's ninety-two counties have seventy-two different tax rates. (Pet'r Partial Summ. J. Br. at 6; State Bd. Tr. at 855.) Furthermore, a county's HCI property tax rate is not tied to the amount of the state HCI fund spent in the particular county. *Id.*

The State Board reviews each county's property tax levy and enforces the requirements of the HCI property tax levy. *IND. CODE* § 12-16-14-4. Any money collected from a county's HCI property tax levy is deposited into a county HCI fund. *IND. CODE* § 12-16-14-5. Each month, all the money from the county HCI fund is then transferred to the state HCI fund. *IND. CODE* § 12-16-14-6(b). The State, which administers the HCI program, reimburses providers of emergency medical care to the indigent for their expenses from the state HCI fund. *IND. CODE* § 12-16-14-8.

---

[11] This statutory formula, although recodified, has remained in place since 1989. *Lake County Council v. State Bd. of Tax Comm'rs*, 706 N.E.2d 270, 273 n.2 (Ind. Tax Ct. 1999), rev'd on other grounds by 730 N.E.2d 680 (Ind. 2000). When the State gained responsibility of the HCI program in 1987, the HCI property tax levy was initially calculated by using a formula that took into account actual HCI expenditures in each county from 1984 to 1986 (prior to 1987, county departments of public welfare were responsible for indigent health costs). *Id.* (citing *IND. CODE* § 12-5-6-6 (1982) (repealed 1992)); *see also Montgomery*, 730 N.E.2d at 681.

The Court notes that effective July 1, 2002, the HCI property tax levy formula will be modified. *IND. CODE* § 12-16-14-3 (West Supp. 2001). For the initial levy after July 1, 2002, Lake County, will impose a levy equal to the HCI property tax levy for taxes first due and payable in the 2002 calendar year *minus $4,000,000* multiplied by the statewide average assessed value growth quotient. *IND. CODE* § 12-16-14-3.4(1*)* (West Supp. 2001) (emphasis added).

In 1993, the legislature changed the HCI program to allow $35,000,000 of the state HCI fund to be used to procure federal Medicaid matching funds, or "special Medicaid revenue." P.L. 277-1993, § 8, 1993 Ind. Acts 4642-43; *see also* P.L. 277-1993, § 82, 1993 Ind. Acts 4783. This money was appropriated before any payments to providers were made from the state HCI fund. P.L. 277-1993, § 8, 1993 Ind. Acts 4642. After the State received the federal Medicaid matching funds, the budget director had to return any funds received in excess of $45,000,000 (up to a maximum of $18,000,000) to the state HCI fund. *Id.* The State then used this money to pay HCI providers under *Indiana Code* § 12-16-7-4.[12]

State Tax

Griffin argues that the HCI property tax levy is illegal because it is a state tax that is not uniform and equal. To support his argument that the HCI tax is a state tax, Griffin relies on this Court's opinion in *Lake County Council*. (Pet'r Partial Summ. J. Br. at 10-11.) In *Lake County Council*, this Court found that the HCI property tax was a state tax rather than a local tax because: (1) the State, through the enactment of the HCI program, statutorily mandates that the county fiscal bodies impose the HCI property tax levy at a formulary rate set by statute; (2) the amount of tax collected in a particular county is not a function of the actual indigent health care expenses in that county; (3) the monies generated by the HCI tax are forwarded to the State; and (4) those state HCI monies are used to defray the expenses and obligations of the State. *Lake County Council*, 706 N.E.2d at 277 & n.13 (citations omitted). To further support his argument that the HCI is a state tax, Griffin points out that the State uses

---

[12] In 1995 and 1998, the legislature made additional changes to the HCI program and how the Medicaid matching funds and exchange would occur, which are not relevant to this case. *See* P.L. 156-1995, § 1, 1995 Ind. Acts 3120; P.L. 340-1995 § 8, 1995 Ind. Acts 4390; P.L. 126-1998 § 5, 1998 Ind. Acts 1508.

the HCI tax to leverage federal Medicaid funding and that State agencies administer Medicaid, which would not be possible if the HCI tax were a county tax. (Pet'r Partial Summ. J. Br. at 11.)

The State Board, on the other hand, argues that the HCI property tax is not a state tax because the legislature refers to the HCI fund in *Indiana Code* § 6-1.1-18-3, which establishes the maximum tax rate for political subdivisions. (Resp't Summ. J. Br. at 34) (citing *IND. CODE* § 6-1.1-18-3(b)(7).)[13] The State Board also points out that the Supreme Court in *Montgomery* referred to this political subdivision statute when discussing the HCI property tax. (Resp't Summ. J. Br. at 34 (citing *Montgomery*, 730 N.E.2d at 681).)

This Court must reject the State Board's argument that the HCI tax is a local tax because the legislature made mention to it under section (b)(7) of the statute setting the maximum tax rates for political subdivisions. The nature of a tax "must be determined by its operation and incidence, rather than by its title or designation made by the legislature. In other words, the legislature may not change a factual situation by giving it a different name or designation." *Wright v. Steers*, 242 Ind.

---

[13] During the tax years at issue, *Indiana Code* § 6-1.1-18-3 provided in relevant part:

> . . . .
>
> (b) The proper officers of a political subdivision shall fix tax rates which are sufficient to provide funds for the purposes itemized in this subsection. The portion of a tax rate fixed by a political subdivision shall not be considered in computing the tax rate limits prescribed in subsection (a) if that portion is to be used for one (1) of the following purposes:
>
> . . . .
>
> (7) To meet the requirements of the county hospital care for the indigent fund.

IND. CODE § 6-1.1-18-3 (West 2000, repealed 3-1-01).

582, 179 N.E.2d 721, 723 (Ind. 1962), *reh'g denied*. Therefore, the legislature's mere reference to the HCI tax under the local tax limit statute does not transform it into a local tax.

As this Court found in *Lake County Council*, the nature of the HCI property tax reveals that it is a state tax. The legislature has mandated by statute that the county impose and collect the HCI tax and has formulated how much the county needs to collect. *IND. CODE* § 12-16-14-3. Each month the county is required to remit these HCI taxes to the State, which puts these monies into the State HCI fund. *IND. CODE* § 12-16-14-6(b). The State disburses the HCI tax monies to pay for the State's expenses and obligations. *IND. CODE* § 12-16-14-8. Furthermore, the State uses the HCI tax to leverage federal Medicaid dollars to defray its State health care obligations. The nature of the HCI tax shows that it is a state tax rather than a local tax.

Moreover, the Supreme Court's reference in *Montgomery* to the HCI tax as excluded from a political subdivision's maximum tax rate does not dissuade this Court from finding that the HCI tax is a state tax. In *Montgomery*, the Supreme Court briefly summarized aspects of the HCI program. *See Montgomery*, 730 N.E.2d at 681. However, the Court did not analyze whether the HCI tax was a state tax and did not look at the nature of the tax. Because the nature of the HCI tax reveals that it is used for state obligations, this Court finds that it is a state tax.

State Tax Rate Limit Statute

The Court finds that Griffin's argument that the HCI tax, as a state tax, exceeds the one cent per $100 assessed value tax rate allowed under *Indiana Code* § 6-1.1-18-2 is without merit. Rules of statutory construction state that if two statutes are inconsistent in any of their provisions, then the more recent statute will control and operate to repeal the former to the extent of the inconsistency. *Componx, Inc. v. Indiana*

State Bd. of Tax Comm'rs, 741 N.E.2d 442, 446 (Ind. Tax Ct. 2000). Moreover, where provisions of a statute conflict, the specific provision takes priority over the general provision. *Id.* As the State Board correctly found, the HCI statute establishing the formula for the HCI tax was enacted subsequent to and is more specific than the state tax rate limit statute (*Indiana Code* § 6-1.1-18-2). Thus, the HCI statute by implication repeals any inconsistent limitation provision of the state tax rate limit statute. *See Componx*, 741 N.E.2d at 446 (regarding rules of statutory construction). Accordingly, this Court will proceed to the issue of whether the HCI tax is constitutional.

Article 10, Section 1—The Property Taxation Clause

Griffin argues that the HCI tax violates Article 10, Section 1 of the Indiana Constitution because the HCI rates of taxation are not applied uniformly and equally across the state. (Pet'r Partial Summ. J. Br. at 12-19.) The State Board argues that the HCI tax does not violate the state constitution because the rate of taxation does not need to be uniform throughout the state and because the HCI tax is a welfare tax, and as such, the constitutional restraints of uniformity and equality do not apply. (Resp't Summ. J. Br. at 17-20.)

The standard of review for alleged violations of the Indiana Constitution is well established. *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1037 (Ind. 1998) (St. John V). Every statute comes before the Court clothed with the presumption of constitutionality until clearly overcome by a contrary showing. *Id.* The party challenging the constitutionality of the statute bears the burden of proof, and all doubts are resolved against that party. *Id.*

This Court rejects the State Board's argument that the Indiana Constitution does not require a uniform and equal rate of taxation. Article 10, Section 1 of the Indiana Constitution plainly requires: "(1) uniformity and equality in assess-

ment; (2) uniformity and equality as to *rate of taxation*; and (3) a just valuation for taxation of all property." *State Bd. of Tax Comm'rs v. Pioneer Hi-Bred Int'l, Inc.*, 477 N.E.2d 939, 942 (Ind. Ct. App. 1985), trans. denied (quoting *State Bd. of Tax Comm'rs v. Lyon & Greenleaf Co., Inc.*, 172 Ind. App. 272, 359 N.E.2d 931 (Ind. Ct. App. 1977)) (emphasis added); *see also Boehm v. Town of St. John*, 675 N.E.2d 318, 326 (Ind. 1996) (St. John II); *Indianapolis Historic Partners v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1224, 1228 (Ind. Tax Ct. 1998). The purpose of these constitutional requirements is to distribute the burden of taxation upon the principles of uniformity, equality, and justice. *Board of Comm'rs of Johnson County v. Johnson*, 173 Ind. 76, 89 N.E. 590, 595 (Ind. 1909); Indianapolis Historic Partners, 694 N.E.2d at 1228; Lyon, 359 N.E.2d at 934.

The limitation upon the legislature that taxation be equal can be satisfied "when there is no discrimination as between taxpayers." *State ex rel. Lewis v. Smith*, 158 Ind. 543, 63 N.E. 25,27 (Ind. 1902), *reh'g denied.* This includes the requirement that "assessments be consistent with similar property of the same classification." *Harrington v. State Bd. of Tax Comm'rs*, 525 N.E.2d 360, 361 (Ind. Tax Ct. 1988) (citing IND. CONST., Art. 10, § 1); *see also GTE North Inc. v. State Bd. of Tax Comm'rs*, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994). "When, for any reason, [taxation] becomes discriminative between individuals of the class taxed, and selects some for an exceptional burden, the tax is deprived of the necessary element of legal equality, and becomes inadmissible." *Smith*, 63 N.E. at 27 (quoting *Cooley, Tax'n*, 169). Thus, if the legislature creates a classification within a statute, that classification must not be arbitrary. *Lyon*, 359 N.E.2d at 934. Instead, the classification itself must be based upon reasons naturally inhering in the property or subject-matter of the legislation, so as to produce no distinction between members of the same class. *See , St. John V*, 702 N.E.2d at 1042; Johnson, 89 N.E. at 593 (citations omitted);

Lyon, 359 N.E.2d at 934 (citing *State ex rel. Lewis v. Smith*, 158 Ind. 575, 64 N.E. 18, 20 (Ind. 1902)).

Article 10, Section 1 of the Indiana Constitution requires that if a property tax levy is used for state purposes, then the rate should be uniform and equal in all parts of the state. *Bright v. McCullough*, 27 Ind. 223, 1866 WL 2548, *4 (Ind. 1866). Griffin has shown that the HCI property tax levy, which has a statewide application and is used for state purposes, does not have a uniform and equal rate across the state. As part of his summary judgment motion, Griffin introduced exhibits to demonstrate that his HCI tax rate was not equal and uniform with other similarly situated properties. (Ex. M.) Specifically, Griffin introduced evidence that showed that in 1997, his Lake County property had an assessed value of approximately $25,000 and that he paid $166 in HCI tax. (Trial Tr. at 21-22; Ex. M.) However, if he had the same $25,000 assessed value property in a different county, such as Johnson County, he would have paid $ 0.08 in HCI tax. (Trial Tr. at 22; Ex. M.) If he had the same $25,000 assessed value property in the adjacent Porter County, he would have paid $17.62 in HCI taxes. (Trial Tr. at 22; Ex. M.)

Because the HCI property tax levy is based on an extrapolation of historical HCI costs in each particular county, disparity exists among the HCI property tax rates of Indiana's ninety-two counties. The effect this disparity has on Griffin and other Lake County taxpayers is demonstrated by the fact that in 1997, Lake County taxpayers owned property totaling 6.46% of the total assessed value in Indiana but paid 41% of the HCI property taxes collected. (State Bd. Tr. at 538, 869.)

The HCI tax statutes have created a classification based upon the taxpayer's county of residence. This classification, however, is arbitrary because it is not based on differences "naturally inhering" within the property itself. *See St. John V*, 702 N.E.2d at 1042; Lyon, 359 N.E.2d at 934. This

classification resulted in similarly situated taxpayers paying widely divergent HCI tax rates. Because the classification created an artificial distinction, Griffin's property is not taxed in an equal or uniform manner with comparable properties. Accordingly, as the State Board conceded,[14] the HCI tax, as a state tax, violates Article 10, Section 1 of the Indiana Constitution. *See Harrington*, 525 N.E.2d at 361 ("The constitutional requirement of uniform and equal taxation requires that the assessments be consistent with similar property of the same classification.").

CONCLUSION

For the aforementioned reasons, this Court finds that the material facts in this case are undisputed and that, as a matter of law, the HCI tax is a state tax, *Indiana Code* § 6-1.1-18-2 is repealed by implication by the HCI tax, and the HCI tax violates the Property Taxation Clause of the Indiana Constitution. Therefore, this Court GRANTS Griffin's motion for partial summary judgment and DENIES the State Board's cross motion for summary judgment. Accordingly, this Court REVERSES the State Board's final determination. The Court, by separate order, will set this matter for further proceedings to determine the nature and extent of Griffin's refund.

---

[14] Indeed, the State Board admits that the HCI tax, as a state tax, is unconstitutional. (Trial Tr. 51-52 ("If [the HCI tax is] a state tax, it would be unconstitutional because people in different counties pay different rates.").)

APPENDIX F

IC 12-16-14

Chapter 14. Hospital Care for the Indigent; Property Tax Levy and Funds

IC 12-16-14-1
County hospital care for the indigent fund; establishment; taxes

Sec. 1. A county hospital care for the indigent fund is established in each county. The fund consists of the following:

(1) A tax levy on the property located in each county.

(2) The financial institutions tax (IC 6-5.5), motor vehicle excise taxes (IC 6-6-5), and commercial vehicle excise taxes (IC 6-6-5.5) that are allocated to the fund.

As added by P.L.2-1992, SEC.10. Amended by P.L. 181-1999, SEC.18.

IC 12-16-14-2
County property tax levy; imposition; collection

Sec. 2. (a) The tax required by section 1(1) of this chapter shall be imposed annually by the county fiscal body on all of the taxable property of the county.

(b) The tax shall be collected as other state and county ad valorem property taxes are collected.

As added by P.L.2-1992, SEC.10.

IC 12-16-14-3
County property tax levy; computation

Sec. 3. (a) For purposes of this section, "payable claim" has the meaning set forth in IC 12-16-7.5-2.5(b)(1).

(b) For taxes first due and payable in 2003, each county shall impose a hospital care for the indigent property tax levy equal to the product of:

(1) the county's hospital care for the indigent property tax levy for taxes first due and payable in 2002; multiplied by

(2) the county's assessed value growth quotient determined under IC 6-1.1-18.5-2 for taxes first due and payable in 2003.

(c) For taxes first due and payable in 2004, 2005, and 2006, each county shall impose a hospital care for the indigent property tax levy equal to the product of:

(1) the county's hospital care for the indigent property tax levy for taxes first due and payable in the preceding year; multiplied by

(2) the assessed value growth quotient determined in the last STEP of the following STEPS:

STEP ONE: Determine the three (3) calendar years that most immediately precede the ensuing calendar year and in which a statewide general reassessment of real property does not first become effective.

STEP TWO: Compute separately, for each of the calendar years determined in STEP ONE, the quo tient (rounded to the nearest ten-thousandth) of the county's total assessed value of all taxable property in the particular calendar year, divided by the county's total assessed value of all taxable property in the calendar year immediately preceding the particular calendar year.

STEP THREE: Divide the sum of the three (3) quotients computed in STEP TWO by three (3).

(d) Except as provided in subsection (e):

(1) for taxes first due and payable in 2007, each county shall impose a hospital care for the indigent property tax levy equal to the average annual amount of payable claims attributed to the county under IC 12-16-7.5-4.5 during the state fiscal years beginning:

(A) July 1, 2003;

(B) July 1, 2004; and

(C) July 1, 2005; and

(2) for all subsequent annual levies under this section, the average annual amount of payable claims attributed to the county under IC 12-16-7.5-4.5 during the three (3) most recently completed state fiscal years,

(e) A county may not impose an annual levy under subsection (d) in an amount greater than the product of:

(1) The greater of:

(A) the county's hospital care for the indigent property tax levy for taxes first due and payable in 2006; or

(B) the amount of the county's maximum hospital care for the indigent property tax levy determined under this subsection for taxes first due and payable in the immediately preceding year; multiplied by

(2) the assessed value growth quotient determined in the last STEP of the following STEPS:

STEP ONE: Determine the three (3) calendar years that most immediately precede the ensuing calendar year and in which a statewide general reassessment of real property does not first become effective.

STEP TWO: Compute separately, for each of the calendar years determined in STEP ONE, the quo tient (rounded to the nearest ten-thousandth) of the

county's total assessed value of all taxable property in the particular calendar year, divided by the county's total assessed value of all taxable property in the calendar year immediately preceding the particular calendar year.

STEP THREE: Divide the sum of the three (3) quotients computed in STEP TWO by three (3).

As added by P.L.2-1992, SEC.10. Amended by P.L.283-2001, SEC. 27; P.L.120-2002, SEC.30; P.L.255-2003, SEC.44.

IC 12-16-14-3.4
Repealed

(Repealed by P.L.255-2003, SEC.55.)

IC 12-16-14-3.7
Repealed

(Repealed by P.L.255-2003, SEC.55.)

IC 12-16-14-4
Review; enforcement

Sec. 4. The department of local government finance shall review each county's property tax levy under this chapter and shall enforce the requirements of this chapter with respect to that levy.

As added by P.L.2-1992, SEC.10. Amended by P.L.90-2002, SEC.342.

IC 12-16-14-5
Deposit of receipts from county tax levy

Sec. 5. All receipts derived from the tax levy shall be paid into the county general fund and constitute the county hospital care for the indigent fund.

As added by P.L.2-1992, SEC. 10.

IC 12-16-14-6
State hospital care for the indigent fund; establishment; monthly transfer of money in county fund

Sec. 6. (a) The state hospital care for the indigent fund is established.

(b) Before the fifth day of each month, all money contained in a county hospital care for the indigent fund at the end of the preceding month shall be transferred to the state hospital care for the indigent fund.

As added by P.L.2-1992, SEC.10.

IC 12-16-14-7
State fund components

Sec. 7. (a) The state hospital care for the indigent fund consists of the following:

(1) The money transferred to the state hospital care for the indigent fund from the county hospital care for the indigent funds.

(2) Any contributions to the fund from individuals, corporations, foundations, or others for the purpose of providing hospital care for the indigent.

(3) The money advanced to the fund under IC 12-16-15.

(4) The appropriations made specifically to the fund by the general assembly.

(b) This section does not obligate the general assembly to appropriate money to the state hospital care for the indigent fund.

As added by P.L.2-1992, SEC.10.

IC 12-16-14-8
Administration and use of state fund

Sec. 8. The division shall administer the state hospital care for the indigent fund and shall use the money currently in the

fund to defray the expenses and obligations incurred by the division for hospital care for the indigent. The money in the fund is hereby appropriated.

As added by P.L.2-1992, SEC.10. Amended by P.L.126-1998, SEC.19.

IC 12-16-14-9
Reversion of state fund

Sec. 9. Money in the state hospital care for the indigent fund at the end of a state fiscal year remains in the fund and does not revert to the state general fund.

As added by P.L.2-1992, SEC.10.

IC 12-16-14-10
Repealed

(Repealed by P.L.80-1994, SEC.2.)